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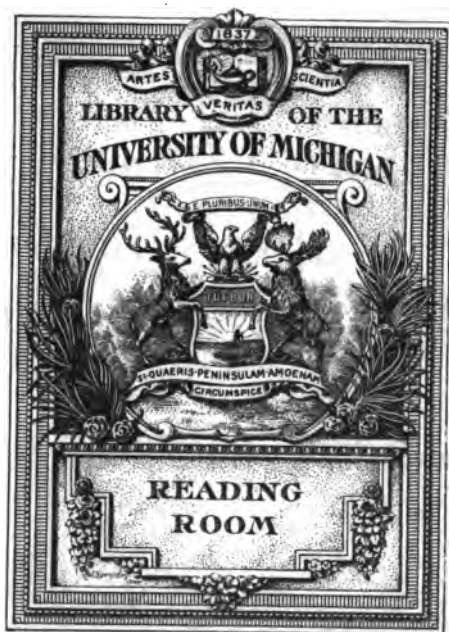
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*DEBATORS' HANDBOOK SERIES*

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UNITED STATES SENATORS





*Debaters' Handbook Series*

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SELECTED ARTICLES

ON THE

ELECTION OF  
UNITED STATES SENATORS

COMPILED BY  
C. E. FANNING

MINNEAPOLIS  
THE H. W. WILSON COMPANY  
1909



May 10 E. S.

## EXPLANATORY NOTE

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In offering this new volume in the "Debaters' Handbook Series," it may be well to claim, as has been done for other volumes in the series, that the chief reason for compilation is the manifest need among debaters for material on the subject under treatment, and the general lack of duplicate library copies of publications in which material may be found. The most valuable articles on the subject have been collected and reprinted entire or in part, the aim being to furnish the best material on both sides of the question without unnecessary repetition. The book also contains a full bibliography of the subject. Inasmuch as the greater number of books, pamphlets and documents contain arguments for both sides of the question all references to them have been grouped under the head of General References. The magazine and Congressional Record references are classed as affirmative and negative according to their attitude for and against the popular election of senators.

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**Arena. 10: 453-61. September, 1894.**

**The Election of Senators and the President by Popular Vote, and the Veto Power. Walter Clark.**

At the date of the formation of the federal constitution in 1787, the governor in all but one or two of the states was elected by the legislature. In determining, therefore, the manner of selecting the two senators who were to represent each of the several states in the federal senate, the utmost the popular element could obtain was their election by the legislatures of the several states. Some of the members of the convention, like Alexander Hamilton, insisted on their being chosen for life, others on their election by the lower house of Congress, and some on their appointment for each state by the governor thereof. George Mason of Virginia and Mr. Wilson of Pennsylvania (afterwards on the United States supreme bench) alone advocated their election by the people. A measure so far in advance of the times received the vote of one state only—Pennsylvania. The election was, as a compromise, devolved on the state legislatures in analogy to the mode then in vogue of electing governors.

One by one the several state constitutions were amended to place the election of governors in the hands of the people. The very same reasons which caused this change should long since have made a similar change in the mode of electing senators. Doubtless the greater difficulty of amending the federal constitution, and the opposition of the Senate itself and of the strong element which finds its benefit in the present mode of election, have prevented an amendment which each state has shown to be desired and desirable by amending its own constitution as to the manner of electing its governor. The facility with which the present mode of election lends itself to the control of the choice of senators by the money power, the selection of a large propor-

tion, probably a majority of the senators, at the dictation of the accumulated wealth of the country, and the consequent indifference with which the average senator is tempted to regard the people's interest, or the people's will, are reasons enough why the mode of election should be changed. These reasons are patent to all and require no argument.

But there are many other reasons which do not lie so apparent and on the very surface of things, but which nevertheless should be sufficient if fairly considered, to justify the change to an election by the people. Among them are these:—

The present mode of election virtually disfranchises all the counties in which the party, which is dominant in the legislature, does not control. Take a state in which either party has only a small majority in the legislature on joint ballot. In such a state half the counties, containing possibly one half the voters of the dominant party, are completely disfranchised. Nay, more; as the choice is usually by caucus, one half of the dominant majority, coming from one fourth of the counties, select the senator. The parties being usually nearly equal at the polls, the members of the legislature who cast the votes of those counties may thus represent less than one eighth of the voters of the state. Such a system is not democratic. That it readily lends itself to manipulation and to the influence of corporate and plutocratic influences would be apparent, even if the world was not advertised of the fact by that unanswerable teacher—experience.

But it is argued that the legislature represents the state. But so do the governor and the judiciary, and even more fully, since they must be chosen by a majority of the voters of the whole state, while not unfrequently the majority of the legislature is chosen by a minority of the voters of the state. Yet who would be content to have the senators appointed by the governor or elected by the judges of the state? Why should they be chosen by the legislative department, when the people themselves are competent to express their own wishes at first hand, and not leave their choice to be determined, as often happens, by men who receive, as above stated, less than one eighth of the vote of the state? Each of those members of the caucus majori-

ty may have been the choice in the nominating convention of his party in his county of a small majority only, making it thus in fact possible and not very unusual for one sixteenth of the voters of the state to control the choice of the senator; and, by means familiar to all men, he may be selected, not even by the will of that one sixteenth, but by the infinitesimal fraction of the voters of the state who happen to fill one fourth of the seats in the legislature, and thus constitute a majority of the caucus of the party dominant in that body; such things have happened.

To be clear, take a state which casts 400,000 votes. A majority of the legislature is elected from counties having 200,000 voters, or often less when there is a gerrymander. A majority in the caucus may, therefore, have been elected from counties having 100,000 voters. But nearly half of these were of the opposite party, leaving the majority of the caucus elected by 50,000 voters. These members were nominated in their respective conventions usually by a majority only of their party in their respective counties, or say 25,000, which is one sixteenth of the 400,000 voters of the state; whereas if elected by popular vote of the whole state, as he should be, a senator must be the expressed choice at the ballot box of more voters than have cast their ballots for any other man, and his nomination must be made by the wish of at least one fourth of the voters, subject to approval of a majority at the ballot box. Can there really be any difference of opinion as to which is the fairest and most American mode of selection, or as to which is least open to corruption, or is most likely to represent faithfully the wishes of the people? It is true states are not always so close; but many are, and any state may at any election become so. What particular sixteenth of the whole vote shall decide the result is rarely left to chance. Skilful manipulation and the adroit use of money for political machinery (not necessarily for bribery) decide the matter and not the people's will. That is evil enough.

The change to election by the people would greatly lessen the chances for corruption. The members of the party convention of the state, brought together directly from the peo-



ple and so soon dispersed again among them, are not so subject to the subtle arts of the lobbyist and professional wire-puller which are brought to bear on the member of the legislature as soon as his nomination is probable, and continued till after the election of senator is over, when, like a squeezed lemon, he can be thrown aside. Besides, the party convention acts with open doors, subject to public sentiment and conscious that its choice, if not wisely made, is liable to rejection at the polls. No such safeguards surround the deliberations of a caucus.

A senator who is tempted while in office to disregard the wishes and the interest of the people, is emboldened by the knowledge that if by certain influences he can control the sixteenth—more or less—who compose a majority in the nominating conventions of those counties which send a majority of the legislators of the dominant party, he is safe for a re-election; and knows further that without being the choice of any perceptible element among the people it is sufficient if he can secure a majority of the caucus. But he will pause if he knows his re-nomination must command the approval of a majority of his party convention and an endorsement of a majority of the voters of the whole state at the ballot-box. Is there any reason why the people should not have this potent assurance of the fidelity of their servant in his office?

One of the disgraces of our institutions is what is known as gerrymandering. It is a disgrace because its purpose and object is to defeat the will of the majority, which is the corner-stone upon which a republican form of government is based. One of the commonest instances of gerrymandering is the apportionment of legislative districts, and sometimes even the creation of new counties, with a view to securing a majority of the legislature to the party which is in the minority in the state on a popular vote. The greatest inducing cause to commit this crime against popular sovereignty is the selection of United States senators. It is well to remove the inducement.

It is well, also, at this stage to call attention to the point that the constitutional amendment which shall place the elec-

tion of senators with the people instead of with the legislature, should contain the provision that such election should be "from the state at large"; else there will be attempts at a modified gerrymander by dividing the state into two senatorial districts of unequal size or dividing it by lines drawn to give party advantage.

**Arena 21: 391-3. March, 1899.**

**Reform in Senatorial Elections.**

At every great political crisis during the last twenty years, instead of proving itself the more conservative and deliberate branch of Congress, the Senate has in fact, been held in check by the House.

**Arena. 24: 14-20. July, 1900.**

**The House and the Election of Senators. Boyd Winchester.**

If the two [houses] were elected for the same period and by the same electors, they would amount in practice to little more than two committees of the same house.

All foreign critics have found in the method of choosing the members of our Senate a sufficient if not the sole cause of its excellence as a legislative and executive authority. It is their opinion that the mode of electing that body constitutes its functions one of the effectual checks—one of the real balances of our system.

The Senate is less democratic than the House, and consequently less sensible to transient phases of public opinion; but it is not less sensible than the House of its ultimate accountability to the people, and is quite as obedient to the more permanent and imperative judgments of the public mind.

**Arena. 27: 455-67. May, 1902.**

**Popular Election of United States Senators.**

**Charles James Fox.**

The sentiment in favor of the popular election of United States senators is gradually growing stronger and stronger. On February 13 the fourth resolution providing for the election of senators by direct vote of the people was passed by the House of Representatives. This fact is significant, for whatever may have been the individual opinions of the representatives themselves they have given by their vote a positive demonstration of their interpretation of the public will on the question. A more conclusive proof that the people favor this change cannot under the circumstances be reasonably asked for; yet those who oppose this change, and the foremost among them, Senator Hoar, refuse to see in this action of the House any indication of a real public desire for this change. The senator just mentioned even went so far as to state on the floor of the Senate that in his opinion the House had passed this bill "as half a joke." There is little evidence, however, to show that one branch of our national legislature permitted a resolution advocating an amendment to the constitution to pass without any opposition "as half a joke."

There is no doubt that the people generally favor this new method of election, and when the people of the United States seriously advocate any political innovation it becomes the duty of all earnest public men to make this innovation the object of their thoughtful attention. There are many who claim that, since this proposition involves an amendment to the constitution, those who favor it have assumed a difficult burden of proof and must show beyond all reasonable doubt that the proposed change is positively better than the present system of selecting senators. This is true to a certain extent; yet it might be answered that, in a country whose political dogma is the sovereign will of the people, when the people unite in demanding a certain change it becomes the duty of all opposing them to show good reasons why they should not have it. The people want the popular election of

United States senators, and we hope to show clearly that there is to-day no sound reason why public opinion should not be followed in this instance. This argument of the popular desire will appeal to many; it is indifferent to very few, and will be opposed chiefly by those who have selfish interests to guard.

There are, however, several sound and positive arguments for the election of senators by direct vote of the people. First among them is that this new method is the logical outcome of our political development, and is quite in accord with our ideals of government to-day. To look upon this question historically we must go back to the time of the birth of our constitution. This step is important and necessary, as our knowledge of the past and present aids us in our efforts to foresee the future. But this attempt to seek advice from the past is often dangerous. Influenced by a natural and just regard for the sound opinions of the framers of our constitution, we are very apt to overlook the fact that these men drew many of their conclusions from premises that no longer exist and while they were influenced by conditions that we have great difficulty in thoroughly realizing to-day. In wondering at the stability of the great document drawn up by these men, we too often forget that this stability is quite as much the result of the sound political sense of the American people as it is of any inherent qualities of the constitution itself. Few people familiar with the subject ignore the fact that our constitution to-day differs much in spirit if not in letter from that constitution which was the result of the mutual ideas and concessions of the members of the convention of 1787. And yet many of us fail to take this fact into due consideration when we quote freely the opinions of these men upon specific questions of the present day.

Many opinions quite rational in 1787 would be ridiculous in 1902. Because our forefathers believed in a certain method of selecting senators over a hundred years ago is no reason for supposing that they would favor it to-day. Every student of history knows that the political development of the United States has been a gradual change from the aristocratic and conservative ideals of the framers of our government to the popular democratic ideas of to-day; that the doctrine of the sover-

eign will of the people has ceased to be our abstract philosophic theory of political resources, and has become a live, practical, every-day principle of the politician. Newspapers, railroads, telegraphs, and accumulated political experience have in the course of time become some of the main causes of this change. When communication between the states was difficult; when the average citizen had merely local interests—little knowledge of state affairs and less of national; when to many Americans a newspaper was a novelty and to all of them a railroad or a telegraph was a dream, we can see the wisdom of those men who wished to keep direct power from a people who for unavoidable reasons had not acquired that political knowledge which is essential to the proper exercise of sovereign power in politics. But to-day, under present conditions, these same statesmen and patriots would undoubtedly be of another opinion.

Remembering the condition of affairs in 1787, we can easily understand how the state legislatures elected the governors and all other officers, civil and military, of the state (even the members of the constitutional convention themselves were chosen by the several state legislatures); how the president was intended to be selected by electors; how property and even religious qualifications were retained in several of the states as absolutely essential to the privilege of voting. But by to-day many changes have taken place. Our president is practically elected by popular vote; so are the governors of the states. Civil and military officers are no longer appointed by the legislatures, and property qualifications are generally abolished. And it is not an extravagant supposition to believe that the framers of our constitution would to-day applaud these changes in the great instrument of their own creation. But this change, great as it is, is not yet complete. We have still the choice of United States senators by the legislatures to remind us of the days when the people were not trusted, and to remind us also that there remains still something for us to do in order to make the doctrine of popular rights everywhere a practical proposition rather than an abstract idea. These several steps in this great change have been gradual, and therein lies the stability of our institutions; but we claim, and we believe not rashly, that the time has now

come to make this change, and that it follows in logical sequence with the others. To hold otherwise is to claim that a people that has made such wonderful advances in commerce, industry, and in civilization has remained at a standstill in politics. This argument of the historic necessity of this change gains in strength the longer and more attentively we consider it.

Another argument in favor of the change we propose is that the present method of choosing senators is quite inconsistent with our political ideals of to-day. A republican form of government should avoid all inconsistencies in its composition. They form a great element of weakness, not only from the fact that they destroy the harmony of the system on which the government is based, but because they expose the government to the frequent natural and adverse criticism of the people and thereby lessen that popular respect which is so essential to the strength of any institution founded on the will of the people. Political anomalies can be supported only by selfish class interests, by narrow bigotry, or by that timid and senseless conservatism which, forgetting that progress is an irresistible law, looks with dread upon all changes. We claim that the present method of choosing our national senators has grown to be one of these dangerous political anomalies. It fitted logically into the scheme of our government when it was framed, but it is not in keeping with its spirit in the year 1902. When the people are considered capable of directly electing every four years a president who represents the entire nation, why should it be considered dangerous to allow them to choose directly two men who represent their state? Are not these two contradictory principles an excellent example of that dangerous inconsistency just referred to? This question is all the more difficult to answer negatively when we remember that the president is nearly always a man of another state, and that the people know far less about him personally than about their own senators. It may be claimed that in voting for the president the people are voting for a party; but this is quite as true of the senators. It may also be argued that the people of one state alone do not elect a president; but it is quite as true that the people of one state cannot control the Senate.

Again, the position of chief executive may be filled by the people acting all at one time under the predominating influence of one agitated question, while the people can fill the Senate only after expressing their will in three separate parts and under the influence of three successive periods. Perhaps it will be said that periods of two or six years are nothing in politics. This may be true, but the effects of a continued popular excitement of a longer period would invade the Senate even if the state legislatures shield them from the terrible influences of popular enthusiasm. Furthermore, it is far from being the mere assertion of a demagogue to insist that to hold the people incapable of electing senators is an insidious reflection upon the dignity of a nation whose political creed is the sovereignty of the people; and this the more so as these same people elect directly every four years the executive branch of the government whose hasty or foolish acts entail quite as great disaster as the similar action of one-half of the legislature. Surely these two principles of election are quite inconsistent. Again, our national legislature does not elect representatives of the nation, and why should the state legislature elect those of the state? Every state in the union has a Senate, and its members are chosen by direct vote of the people. In fact, all the agents of the people with the single exception of the national senators are practically selected either by popular vote or by executive appointment. It is true that the legislatures exercise a certain control over executive appointments, but that does not alter the fact that the present method of selecting senators is inconsistent with our ideals and our practise.

Another consideration in favor of popular election is that it would not impair the efficiency of the Senate in any way, and would be beneficial to the senators themselves. Our opponents usually put forward the claim that the Senate is a check upon the House, and then imply that this would not be the case under the system we propose. The Senate should no doubt exercise a certain restraining influence over the House. Many different opinions have existed on this subject, but to-day the only sound principle is that the Senate being elected for a longer term than the House, and being composed of older and usually

more prominent men, represents the more permanent interests of the nation which at certain moments are apt to be disregarded; while the House is more responsive to the momentary impulses of the people. To disregard the longer term, the more advanced age, and the greater prominence of the senators, and then to claim that their acknowledged conservatism and dignity are based solely or even principally upon their manner of election is ridiculous. To say that the Senate would be under the new method of election, a second house of representatives is to declare that every state in the union has two houses of representatives. It has often been said that the popular election of senators will shorten the average time during which the senators will remain in office. There is doubtless some truth in this statement, but its force is greatly diminished when we think of the large number of representatives who have spent a great part of their lives in the lower house even though the people had every two years a chance of changing them. Then, again, it is not positively demonstrated that it is very essential for the senators generally to remain several terms. If after an opportunity of six years a senator cannot publicly demonstrate his worth it is perhaps just as well to give another an opportunity. The upper branch of our legislature is not a school where the senators are supposed to remain several terms before becoming capable statesmen. Furthermore, a senator must watch his constituents and should under ordinary conditions strive to be honestly re-elected. It is far more dignified as well as more profitable for a senator to sound the people at different times than it is for him to watch the state legislatures. Since he ought to know the wishes of his people, is it not better for him to find them out directly? A senator can well afford to strive to remain in touch with the people, but to keep in communication with a certain section of every third legislature is undignified to say the least.

This new method of electing senators would be very beneficial to the state legislatures. These are elected primarily to consider local and state affairs, and it is better that they should not be hampered with national obligations. This is all the more true when we remember that the choice of a senator has many



times occupied the entire session of a legislature; that senatorial dead-locks are not of infrequent occurrence; that the election of a senator has often divided the legislature into two hostile sections; that it has sometimes split the party in power and thereby disrupted its working harmony; that the question as to how a person will vote for senators has become an important but illegitimate factor in his qualification for the state legislature, and furthermore that this personal question relative to the selection of senators is something foreign to our ideals of the deliberations of a legislative assembly. It may be claimed that depriving the state legislatures of the right they now possess will be injuring rather than aiding them. But we are relieving them of a duty which is inconsistent with their other duties, and which is often disastrous in its results, as has just been shown. Again, the choice of the state governors and of all civil and military officers has been removed from the state legislatures, and why should we stop when we reach the senators? Why should we hesitate to make this change in order to continue our gradual progress toward the absolute rule of the people? It is the growth from which we derive strength, and one which it is dangerous to attempt to prevent.

Finally, one important argument in favor of popular election is that it would be of great political value to the people themselves. The great store of political learning and experience which the railroads, telegraphs, and newspapers have aided in placing before the people is not always readily absorbed. There is no doubt that the people do not take entire advantage of their opportunities in this respect, and it is equally undeniable that the government should do all in its power to encourage either directly or indirectly the acquisition of political knowledge and experience by the people, because on the political foresight and ability of the people depends absolutely the welfare of all democratic governments. During times of political excitement and when called upon to choose by election their representatives the people acquire almost involuntarily a certain lesson in practical politics. The election of the representatives is often a comparatively local affair and brings up usually but the discussion of local issues. All the other elections with one notable exception

in which the people take a direct part are state elections, and the issues discussed are semi-local." But then every four years the people are called upon to choose the chief executive of the entire nation. There is no real medium step between the popular election of a state officer and that of the president of the United States. From the discussion of state issues and the consideration of state interests the people are suddenly called upon to give their opinion on the greatest questions of political category—on questions that involve the vital interests of the nation as a whole. Now, the popular election of senators would supply that salutary and essential medium step. By this act the people would be instructed to a certain extent in national politics before being called upon to voice their opinions on a national issue. It is true that the people elect only two senators every six years, but the very fact that they are elected by the people and that they are directly responsible to the people would naturally bring them in closer touch with the people—to the great benefit of the latter. To-day a senator does not fear popular criticism to so great an extent, but under the proposed method he would feel a more direct and immediate although not necessarily a greater responsibility and would therefore see to it that the people understood his actions in order to approve them.

**Arena. 40: 428-31. November, 1908.**

Election of United States Senators. Edwin Maxey.

We will mention the more prominent inconveniences and evils which the actual working of this method has developed. These may be fairly well classified under three heads, according to their effects (1) upon the senate, (2) upon the state legislatures, and (3) upon the people.

As a result of this method the Senate is congested with men whose purse and political trickery is out of all proportion to their ability as statesmen. For it is a matter which cannot be gainsaid that the political machine can be used far more effectively

in electing a legislature favorable to a boss or his political creations than in securing their own election at the polls. And the further fact is well known that money can be used to better advantage in lobbying a legislature than in buying an election, where the money must needs be distributed over a larger surface and the safeguards against corruption are much more numerous. A Pennsylvania politician formulated this with more frankness than self-respect in the following statement: "I can use my money to better advantage in buying a legislature than in buying the people of the state."

Senators do not feel their responsibility to the people of the state to the extent they would if elected directly by the people. If a senator is unscrupulous it is a matter of indifference to him what the people think of him so long as he can retain his hold upon their legislatures. It is a fundamental principle of representative government that power should be coupled with responsibility. While this in theory holds with reference to our United States senators, as a matter of fact responsibility becomes considerably attenuated when the body to whom one is responsible is not a permanent body, and this is the case with our state legislatures—few members of our legislatures continue in office more than six years, so that a senator may disregard the wishes of his state legislature with comparative impunity. Not so when his responsibility is to the people; they are a relatively permanent body and the same constituency which elected him once will have an opportunity to elect or defeat him again. The fact that they are elected for a six years' term—which is three times as long as that of a congressman—removes sufficiently their sense of responsibility without having this insulating pad in the way of a legislature placed between them and the people. Responsibility is always most effective when direct and certain.

The effect upon our state legislatures is equally marked and all too often is equally demoralizing. The members of the legislature are chosen, too frequently, not with a view to their fitness to serve their state in the capacity of legislators, but because they favor this or the other candidate for the United States Senate. Here, then, is a mixing of issues in state elections, the effect of which is too easily understood to need comment. The next

effect is to invite corruption; for there are always some members uninstructed by their constituents with reference to candidates for the United States Senate who can be influenced, and some more who are willing to disregard their instructions, providing the monetary arguments of the candidate or his friends are insufficiently eloquent; or, to put it in a balder form, they can be induced to set a price upon themselves. There is the further objection that it frequently uses a large portion of their time. A direct election by the people would thus save the legislature considerable time and if this be not needed for legislation they could adjourn and go home so much earlier, and by so doing save the state considerable expense as well as suspense. If the contest for a senatorship is fierce, the forces of the dominant party divided, and factional feeling bitter, we have a "deadlock." And of late "deadlocks" are by no means infrequent. If the case is an aggravated one, the whole session is sometimes consumed without getting anything done. This is a two-fold injury to the state first, in that the time which should have been spent in legislating for the interests of the state has been uselessly squandered; and second, in that the state loses a part of its representation in the United States Senate. The "deadlocks" in Delaware, Pennsylvania, Kentucky, Montana and California are too recent to need more than a passing mention in order to renew in our minds the disgraceful incidents connected therewith.

Upon the people the effect is certainly not such as to commend the present method. It increases their distrust of their state legislatures; because if the contest is at all close there are seldom wanting charges, too often well founded, of treachery and bribery. It is in part responsible for a lack of confidence in and respect for the United States Senate. It is a lamentable fact that the American people have, to a considerable degree, lost confidence in this body to which a half-century ago they looked with pride; and justly so, for during the early half of the nineteenth century it compared favorably with any legislative body in the world. True they had the same method of electing senators then as now; but circumstances have changed. The political machine exerted but a fraction of the effect upon



the legislatures then that it does now; nor was lobbying practiced to anything like the same extent. Corporate influence, which now dominates the Senate, was then a relatively unimportant factor.

**Atlantic Monthly. 68: 227-34. August, 1891.**

**Reform of the Senate. Wendell P. Garrison.**

It might plausibly be maintained that the United States Senate is the most corrupting element in our national political system. This is not because it has become, as is sometimes alleged, a club of millionaires. Such a consummation would not have displeased certain of the framers of the constitution. General Pinckney opposed the payment of salaries to senators, on the ground that their branch "was meant to represent the wealth of the country," and that, in the absence of salaries, "the wealthy alone would undertake the service." Franklin seconded his motion. George Mason would have annexed a property qualification, since "one important object in constituting the Senate was to secure the rights of property." Their views did not prevail, but the millionaires have arrived, and make no scruple about drawing their salaries. They are a consequence of the mode of electing senators established by the constitution, and a part of the general demoralization ascribable to the same cause.

Notoriously, the Senate was the great stumbling-block—almost the *crux*—in the constitutional settlement. Edmund Randolph's plan provided for its election by the House "out of a proper number of persons nominated by the individual legislatures." George Read's substituted the president for the House. Dickinson, following Spaight, of North Carolina, moved that the legislatures elect. Wilson, of Pennsylvania, on the other hand, advocated direct popular election; arguing that a choice by the legislatures would "introduce and cherish local interests and local prejudices." Any of the rejected schemes, we can see, would have had its own dangers and abuses; but who can say

whether the result would have been more disastrous than that of Dickinson's, under which we have worked for a century? Read thought he foresaw, from a general character of the constitution, an end of the federal system by absorption, so that the state governments would "soon be reduced to the mere office of electing the national Senate"; and this fear found an echo in the ratifying conventions. Thus, in Pennsylvania, John Smilie, speaking for the minority in opposition, said the state legislature would "necessarily degenerate into a mere name, or at most settle in a formal board of electors, periodically assembled to exhibit the servile farce of filling up the federal representation." In New York, again, it was objected that the Senate would tend to perpetuate itself, and Chancellor Livingston retorted: "Can they make interest with their legislatures, who are themselves varying every year, sufficient for such a purpose? Can we suppose two senators will be able to corrupt the whole legislature of this state? The idea, I say, is chimerical. The thing is impossible."

No contemporary, so far as I can discover, anticipated the precise evil which has brought us to our present pass, and which is touched upon, all too lightly, by Mr. Bryce in the chapter on the Senate in his *American Commonwealth*. After quoting Hamilton, in *The Federalist*, as saying that the Senate would furnish "a convenient link" between the federal and state systems, Mr. Bryce remarks (the italics are mine):—

"In one respect this connection is no unmixed benefit, for it has helped to make the national parties powerful and their strife intense, in these last-named bodies. *Every vote in the Senate is so important to the great parties that they are forced to struggle for ascendancy in each of the state legislatures by whom the senators are elected.*"

In other words, the constitution from the beginning insured the coincidence of state with federal party lines. This, it may be admitted, tended irresistibly to the consolidation of the country, but it had also the effect of mischievously prolonging the term of party existence; producing artificial divisions in local matters; making party fealty, and not competence or honesty or patriotism, the credential of office-holding at every degree of

the scale, whether state or federal; and so leading to the steady deterioration of the personnel of state legislatures, the growth of machine rule, the purchasability of senatorships, and the decline of the federal Senate to what we now see it,—in large measure a medley of millionaires, "bosses," and the representatives of selfish interests.

If we must have parties, it is highly desirable that they should arise spontaneously, on clearly formulated principles and with definite objects; that they should cease to exist as soon as possible after these objects have been attained; that they should be easily attacked when the love of power becomes the real motive for existence, and when insincere professions take the place of genuine beliefs and aspirations; that honest members should be free to withdraw, and coöperate patriotically with others of like mind; that we should not go on stupidly transmitting from sire to son the antipathy begotten by obsolete party differences which have been outlasted by party names. To such flexibility the constitution has erected a formidable barrier in the provision which forces state politics to turn upon the national complexion of the legislature, and makes the arbitrary control of that body by the managing spirits of the great parties the key to the political game.

That a governor, again, in ordinary times, or a mayor, a town collector, an overseer of the poor, a constable, should be selected for his national party badge, and not for fitness and probity, is of course destructive of the idea that public office is a public trust, derived from the people and answerable to the people. Have we not here the germ of the most of our civic corruption? The very existence of the machine and the boss is involved in keeping up this vicious confusion of things entirely distinct, and in hindering the subservient partisan from voting upon the real local (state or municipal) issue, or upon the character of the candidate, by making his concern for the success of the national party paramount. So long as this state of things continues, it seems hopeless to look for any such purification of our politics as will tempt men of refinement, honor, training, and public spirit to seek a statesman's career. The federal Senate, which should be the assured goal of the class competent to govern,

and a model of legislative dignity, capacity, and behavior, cannot be expected to fulfill these functions while the state legislatures remain vulgar, petty, and sordid; and the state legislatures, in their turn, cannot avoid these vices so long as their excuse for being is primarily to elect senators, and only secondarily to attend to the affairs of their respective commonwealths.

One who examines the subject closely, in search of a remedy short of an amendment of the constitution, will fix upon the abrogation of the existing statute regulating the election of senators, and propose either the substitution of a new law, or the relegation to the several states of the control of the whole matter. The statute in question was approved on July 25, 1866, by President Johnson. It was introduced by Senator Clark, of New Hampshire, pursuant to instructions to the Judiciary Committee, on motion of Senator Williams, of Oregon, to inquire into the expediency of providing a uniform and effective mode of securing the election of senators in Congress by the legislatures of the several states. It was reported—as Senate Bill 414, “to regulate the times and manner of holding elections for senators of Congress”—and read and passed to a second reading on July 9, 1866. It excited no partisan opposition, and was passed two days later, after a short debate. On July 12 it was ordered printed by the House; on July 23 it was read three times without debate, and passed by a large majority. It was intended, in the language of Senator Clark, “to avoid the questions and differences that have sometimes existed.” In this it has only partially succeeded, while it has tended steadily to impair the quality of the senators returnable under it.

The law provides that the two houses of the legislature shall meet and vote separately for senator on the first ballot, afterwards in joint convention; that voting shall be *viva voce*, and election by majority; and that at least one vote daily shall be taken till election is arrived at.

All these provisions encountered weighty objections. Senator Sherman, who voted in the negative, and who, from past experience, saw little need of Congress availing itself of its constitutional right to interfere, preferred a joint convention at once, advocated election by plurality, and was indisposed to



interrupt the legislature's proper work till the senatorial election was got out of the way. He also pointed out the awkward effect of the law in the case of states holding biennial elections,—that a vote for senator might have to be taken fifteen or eighteen months in advance. Senator Fessenden made a strong but ineffectual stand against the viva voce vote, as not being the usage in his state of Maine for one thing, and because "it is generally understood that the ballot is a more free and unembarrassed mode of voting." Moreover, he said, the viva voce vote was liable to put men "under restraints from party discipline which would lead them to act against their conscientious convictions of what was right and proper in the individual case, and which might bring a sort of compulsory pressure upon them which might be objectionable." Against this, Western usage was held up by Senators Trumbull and Williams: Trumbull saying that constituents had a right to know how members voted, and that there would be no chance to cheat by false or double ballots; and Williams, that members were frequently instructed by constituents how to vote, and the latter had a right to know if their mandate was obeyed as it should be. Senator Anthony, of the pocket borough of Rhode Island, even advocated open voting by the people at the polls as the only true way; alleging, "It prevents corruption, it prevents deception, and cultivates a manly spirit everywhere." Senator Sumner was of the contrary opinion as regarded popular elections, but held that in the legislature the votes belonged to the constituents. Mr. Edmunds and Mr. Sherman voted with Mr. Fessenden, and there were three others of like mind; but twenty-eight held to viva voce.

It cannot be doubted that the overruling of these objections played admirably into the hands of the machine, insuring its control of the nominations and its marshaling of supporters by party pressure and by purchase. The open vote does not "prevent corruption"; it favors it by putting an obstacle in the way of treachery on the part of the bribed. It "prevents deception" of a certain kind, while fostering the grave deception that the legislator is voting according to his "conscientious convictions," and not from "compulsory pressure." It "cultivates a manly spirit," such as rings and machines most delight in, or manu-

facturers who wish to coerce the vote of their employees. Happily there is no need to insist on this point, as we are in the midst of an extraordinary movement, state after state, to substitute everywhere the secret for the open ballot as a means of restoring a manly spirit to the voter, protecting him from the consequences of his vote, and, above all, enabling him to baffle the cut-and-dried schemes of the caucus and the machine with independent nominations, having a chance of success without great outlay or preliminary organization. The Australian ballot, in fact, whose potency in purifying our politics cannot now be calculated, but which is certain to be very great, commends itself for adoption wherever the corruptionist or the boss finds a field for his devilish activity; and were the states once more free to elect senators in their own fashion, this mode of voting might stand a chance of being prescribed for senatorial elections.

To make it of the greatest utility for this purpose, however, it ought to operate on a greater number of nominations than are commonly presented to a legislature by the respective party machines or caucuses. To secure these we must look to the people, making an appeal to them in advance of the mischief which they are now powerless to stave off or to repair. For this we have the warrant of the supporters of the statute of 1866 themselves. Senator Williams, as we have seen, held that, despite the constitutional injunction that the legislature should choose senators, constituents had a right to instruct members how to vote, and to be obeyed; and Senator Sumner quite as frankly took the same ground. Both, in other words, acknowledged the rightful force of public opinion in shaping the legislature's action; and, as a matter of history, senators have, in certain states, again and again owed their re-election to respect for the popular sentiment and tradition in favor of retaining faithful servants in office.

Let us, then, suppose the states free to give to the people the power of nominating, at the proper general election, candidates for the approaching senatorial vacancy. Suppose that these nominations were reached as now under the ballot-reform laws; the state printing on the official ballot the names of such as had

a certain group of petitioners behind them (say three to five thousand). Then let the five to ten highest be the popular instruction to the legislature to choose from among these, and let the legislative voting take place in joint convention, again by the Australian system, each member to vote on the first ballot for three on the list; on the second, for one (or two, as the case may be) out of the three highest as determined by the first ballot. In case of a tie let the decision be by lot.

From this method certain obvious benefits would accrue. The legislator's choice would no longer be—as it too often is now, as the common voter's generally is—merely a choice of two evils. The people of the state would scan eagerly their own list of candidates, and could not avoid the comparison between the most worthy and the least, especially if the latter were the party nominees. A man fit to be senator would have a decided prestige when proposed in this manner as against the product of intrigue and jobbery. Such men would tend to multiply in the popular nominations, inasmuch as they could allow their names to be used without loss of self-respect, and with no obligation to work in their own behalf. Their appearance in the public view as ready to serve the state would recommend them for election to the legislature or to the lower house of Congress; in either of which positions they would demonstrate their fitness for promotion to the federal Senate, while meantime elevating the bodies to which they were elected. Moreover, if an abundance of good material were always in sight, the practice of nominating non-residents of the congressional districts, which is much to be desired, and which was signally exemplified last year in Massachusetts in the case of Dr. William Everett, would become common.

If a precedent be demanded for nominations in the manner just described, we can cite that recalled to mind by President Welling in a recent address on Connecticut federalism before the New York Historical Society.

"I must add," he says, "that the old electoral system of Connecticut was ingeniously devised to promote the genesis of a natural aristocracy,—the aristocracy of talents and virtues. Each freeman in the colony was required, in September of each year,

to name twenty men whom he wished to have placed in nomination for the office of 'Assistant,' the so-called 'Assistants' being the dignitaries who composed the Council, or colonial Senate. From the mass of nominations made at these primary assemblies of the townships, the General Assembly, six months before each election, selected and published the names of the twenty men who had received the highest number of nominating votes, and these men could be voted for on the day of the final election, when twelve out of the twenty were to be elected."

Nearer in point of time and to our present purpose is the Massachusetts practice during the first quarter of the century, by which each congressional district nominated three presidential electors, of whom the legislature chose one for each district, besides the two electors at large.

Still closer and more recent is the provision of the constitution of Nebraska (1875) noticed by Mr. Bryce. The electors, in voting for state legislators, are allowed to "express by ballot their preference for some person for the office of United States Senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for state officers." The futility of this, however, is apparent, as the legislature is in no way constrained to pay any heed to public sentiment. In fact, in actual practice, this privilege has only once been availed of by the people of Nebraska, namely, in 1886, when General Van Wyck made an active canvass in his own behalf as an anti-monopolist. The Republican and Democratic parties abstained from preliminary nominations, and General Van Wyck secured in November about a third as many votes as were cast for governor. In January, on the first two ballots, he received a plurality of the legislative vote, but was finally rejected.

To head off the machine, to give back to the people the right of *nomination* as well as of election, to restore to the state legislatures their stateward-looking character and duties, to divorce (so far as is possible) national from state politics, to fill the federal Senate with men whose prime qualifications are unpartisan and whose election is spontaneous, to pave the way for the re-entrance into politics of the cultivated classes to whom it has become abhorrent,—all this may be accomplished by making the

choice of United States senator uncertain to such a degree that no political rewards can be promised, or obtained in connection with it. Let the people nominate, let the legislature choose, within limits. Mr. Bryce remarks on the Nebraska provision that it is "an attempt to evade, and by a side wind defeat, the provision of the federal constitution which vests the choice in the legislature"; and of course the same criticism would apply *a fortiori* to the scheme set forth in this paper. But is it certain that the courts would so pronounce? The legislature would still *choose*, if under conditions prescribed by the state laws, supposing the statute of 1866 to have been abrogated. Moreover, in practice, its range of choice would be, not diminished, but enlarged. Nobody has challenged, or would venture to challenge, Mr. Bryce's own account of the existing procedure. Senators, he observes, "are still nominally chosen, as under the letter of the constitution they must be chosen, by the state legislatures. The state legislature means, of course, the party for the time dominant, which holds a party meeting (caucus) and decides on the candidate, who is thereupon elected, the party going solid for whomsoever the majority has approved. Now the determination of the caucus has almost always been arranged beforehand by the party managers. . . . Circumstances may change, compromises may be necessary; still it is now generally true that in most states little freedom of choice remains with the legislature. The people, or rather those wire-pullers who manage the people and act in their name, have practically settled the matter at the election of the state legislature."

But what if the wire-pullers find that electing the legislature is not the same as electing the senator? They will lose the chief reason for interfering with these elections, which will tend more and more to be governed by local issues and personal merit. The men thus sent up will be more independent of party, and more free to choose wisely and patriotically from the list for senator returned by their constituents.

The stability of the federal senate is, no doubt, a wholesome feature of our constitution, but we must not forget that this branch became the bulwark of slavery, which measured its term of life by the preponderance of its supporters in the upper

house. Two years ago, the promoters of our present tariff legislation were confident that their control of the Senate would prevent for years to come the undoing of the extremest measure they might carry in the short interval of their having a majority in the House of Representatives also. Certain accidents by which the engineer was hoist with his own petard have falsified this calculation; but the danger is a standing one, and the Senate ought never to be counted upon as the citadel of sectional or selfish combinations. The law under which it is now renewed favors such a perversion of it, and it has not prevented deadlocks. It is time that the states should ask to have their freedom restored to them, and take the penalty of going unrepresented so long as they cannot agree upon a candidate. We might then introduce by degrees the combination of popular nomination and secret balloting described above, and trust to a steady if slow amelioration of the whole tone of our politics, a decline in the persistence of parties and a falling-off in party management, the emancipation of the state legislatures, the reformation of the federal Senate.

### **Congressional Documents.**

**52d Congress, 1st Session. Senate Report 794. pt. 1.**

Reported by William E. Chandler.

Before enlarging by changes in the constitution the field of popular elections we should take steps to purify the suffrage and to secure honesty in the elections now required. (1) There is at the South a large body of citizens whose votes are suppressed in violation of the fifteenth and last amendment of the constitution. The amendment is a dead letter. Our very first next amendment of the constitution should be one to make the fifteenth amendment for manhood suffrage a living reality all over the union. (2) There is a vast and alarming body of illiterate voters in the country, and their proportion is not diminishing. (3) There are degraded voters in masses in our large

cities, many of them ignorant aliens unlawfully naturalized, making republican government in such cities a failure and its nominal existence a peril. The suppression and degradation of the suffrage by the three causes should be remedied before its scope is widened by more popular elections than the marvelously wise constitution of the fathers now requires.

**Congressional Documents.**  
**55th Congress, 2d Session. House Report 125.**

Minority report by D. A. De Armond.

It is generally believed, whether true or false, that in some states United States senators have been elected by the bribery and corruption of members of the legislatures electing them. This high office ought to be the people's reward for great public services rendered, noble patriotism, high ability, and true statesmanship, and not a means of profit, or the prize of the highest bidder.

For a hundred years this distrust of the people, as embodied in our national constitution, has stood congealed, fixed, and immovable.

The cause of free government in the several states has steadily advanced, until now, in the best governed among them, the will of the intelligent masses of the people is truly sovereign.

The idea that all governments derive "their first powers from the consent of the governed," that the will of the people shall rule, upon which the fathers of the republic, cautiously and fearingly, founded our government, exemplified and expanded, tried, tested, and not found wanting, as it has been in the several states, has spread triumphant over the whole Western Hemisphere. It has crossed the Atlantic and swept over Europe. Thrones have crumbled before it, and out of their wrecks, or upon their ruins, have been builded governments whose administration is immediately responsible and responsive to the will of the people through their elected lawmakers.

**Congressional Record. 23: 6060-6. July 12, 1892.**

Henry St. George Tucker.

The use of money in the election of senators has a most vicious effect in another respect. The legislatures, under the present system, possess the electoral function in the selection of senators. The money which corrupts, by purchase, the member of the legislature for senatorial elections has debauched him as a servant of the people he is sworn to serve in local legislation. The corporation that can enter the halls of a legislature and lay its unholy hands upon the members, claiming them as its own in the selection of a senator, has already destroyed the hope of a pure administration of the local affairs of the people of that state by polluting the source from which such administration is derived. Under the specious guise of interest merely in the senatorial election, legislatures are debauched and the purchased member in the senatorial election can hardly pose as the unbought and unpurchasable tribune of the people's local rights. If the charges of corruption in senatorial elections are true, the reflex action on the legislation in the states, incident to such corruption, must be immeasurable in its destruction of the rights and liberties of the people of the states.

We find also the Senate of the United States, under the treaty-making power of the constitution, is arrogating to itself the power to lay taxes. That power has been given by the constitution of this land to the Congress, but we find now that, under this power, the president and the Senate are not only making treaties, which they have a right to make, but they are making the treaties which, in effect, levy taxes upon the people without the consent of this House, a co-ordinate branch of Congress, and which alone under the constitution has the power to originate tax bills.

It marks the gradual absorption of the taxing power of the government by the Senate, without responsibility to the people for its exercise.

**Congressional Record. 25: 101-110. April 6 and 7, 1893.**

George F. Hoar.

The resolution submitted by Mr. Hoar on the 3d instant was read as follows:



*Resolved*, That it is inexpedient that the resolution sent to the Senate by the House of Representatives during the last Congress, providing for an amendment of the constitution securing the election of senators by the people of the several states, be adopted.

Such a method of election would essentially change the character of the Senate as conceived by the convention that framed the constitution and the people who adopted it.

It would transfer practically the selection of the members of this body from the legislatures, who are intrusted with all legislative powers of the states, to bodies having no other responsibilities, whose election can not be regulated by law, whose members act by proxy, whose tenure of office is for a single day, whose votes and proceedings are not recorded, who act under no personal responsibility, whose mistakes, ordinarily, can only be corrected by the choice of senators who do not represent the opinions concerning public measures and policies of the people who choose them.

It requires the substitution of pluralities for majorities in the election.

It will transfer the seat of political power in the great states, now distributed evenly over their territory, to the great cities and masses of population.

It will create new temptations to fraud, corruption, and other illegal practices, and in close cases will give rise to numerous election contests, which must tend seriously to weaken the confidence of the people in the Senate.

It will absolve the larger states from the constitutional obligation which secures the equal representation of all the states in the Senate by providing that no state shall be deprived of that equality without its consent.

It implies what the whole current of our history shows to be untrue, that the Senate has during the past century failed to meet the just expectations of the people, and that the state legislatures have proved themselves unfit to be the depositaries of the power of electing senators.

The reasons which require this change, if acted upon and carried to their logical result, will lead to the election by the direct popular vote, and by popular majorities, of the president and of the judiciary, and will compel the placing of these elections under complete national control.

It will result in the overthrow of the whole scheme of the Senate and, in the end, of the whole scheme of the national constitution as designed and established by the framers of the constitution and the people who adopted it.

Mr. Hoar. Mr. President, I suppose that no thoughtful person will deem a discussion of this topic out of time or premature. Four important states have sent to us resolutions of their legislatures favoring such a change in the constitution. Three senators have advocated it in elaborate speeches. The House of Representatives, without a debate, has passed resolutions for submitting the change to the states. The careless and thoughtless dealing with this subject is shown by the proposal to take from Congress all power over the manner of electing senators—a step which would go far, in my judgment, to change this country from a nation into a league or confederacy.

I am not sure whether it is the good fortune or the ill fortune of our American political system that our controversies so often relate to matters which are vital, not only to the well-being, but to the very existence of the republic. The English take their constitution for granted. They can change anything in their state by a simple act of legislation. But it has been rarely in their history that great constitutional changes have been brought about by the action of legislative bodies. They have never been brought about by the direct action of the people.

The abandonment of the influence of the sovereign in legislation, the abandonment of the veto power, the diminished authority of the House of Lords, the transfer of executive power from the immediate servants of the Crown to the ministers, who depend for their official existence upon the majority of the House of Commons—all these things have come to pass so silently that it is difficult to discover when any of them took place. Although our constitutions, state and national, are all in writing, there are constant attempts to make changes of the most radical and vital character, and to bring them about suddenly and without deliberation or discussion by popular action.

If the Senate as at present constituted is to be defended, it is to be defended here. If the great reasons which moved our fathers to establish this chamber, which they hoped would last in unbroken succession until time shall be no more, to give its members a tenure of office more enduring than that of any other department of the government save the judiciary alone, to remove it from the operation of the fleeting passions of the hour, to lay its foundation below the frost, and to remove the appointment of the men who are to compose it, as far as may be, from the temporary excitements which so often move the people to their own harm, are understood anywhere, those reasons must be understood by the men who fill these seats. If this great part of the structure of our body politic is to be maintained, it must be maintained by the confidence of the American people in the character of their senators and by the strength of argument which those senators must themselves at least help to furnish.

This is clearly, Mr. President, a question of centuries, and

not of years. In determining it we must appeal to our experience of a hundred years, and not merely to that of yesterday or the day before. A present impatience is not only no good reason for making a change, but its existence seems to me an especial reason for postponing it. If we listen only to present complaints, we must make radical changes also in the manner of electing the president, in the constitution of the state legislatures, in our judiciary, in the House of Representatives, in the management of our great corporations, of our railroads, our schools, our universities, the church, the law, and the private habits of the people. Complaint, impatience, uneasiness attend upon everything which depends upon human instrumentality for its administration. They are the sign of vigorous health, and if soberly and thoughtfully dealt with are the conditions of all life and growth.

We must judge the Senate, as I have said, by the experience of a century, and not by a few recent failures. Whatever there may be of existing evil may be corrected by the intelligence and good sense of the people, as other evils quite as great have been corrected in the past.

When I came into the national service in 1869, all avenues to this and the other chamber and to every executive department were swarming with a powerful and corrupt lobby. That lobby has disappeared before an aroused and vigorous public sentiment. Who hears now of great measures of legislation promoted or affected in Congress by corrupt instrumentalities?

When I came into public life in 1869, the Senate claimed almost entire control of the executive function of appointment to office. Every senator, with hardly an exception, seemed to fancy that the national officers in his state were to be a band of political henchmen devoted to his personal fortunes. What was called "the courtesy of the Senate" was depended upon to enable a senator to dictate to the executive all appointments and removals in his territory. That doctrine has disappeared as completely as the locusts that infested Egypt in the time of the Pharaohs.

When I entered public life in 1869, Tweed was the dominant power in New York City. He dictated alike all civic expenditures and the appointment and the judgment of the courts of the

city. It became my duty, in representing the House of Representatives on the impeachment of a public officer before the Senate, to utter the following language of warning, the timeliness and necessity of which I think few men will now question :

My own public life has been a very brief and insignificant one, extending little beyond the duration of a single term of senatorial office. But in that brief period I have seen five judges of a high court of the United States driven from office by threats of impeachment for corruption or maladministration. I have heard the taunt, from friendliest lips, that when the United States presented herself in the East to take part with the civilized world in generous competition in the arts of life, the only product in her institutions in which she surpassed all others beyond question was her corruption.

I have seen in the state in the union foremost in power and wealth four judges of her courts impeached for corruption, and the political administration of her chief city become a disgrace and a byword throughout the world. I have seen the chairman of the Committee on Military Affairs in the House, now a distinguished member of this court, rise in his place and demand the expulsion of four of his associates for making sale of their official privilege of selecting the youths to be educated at our great military school. When the greatest railroad in the world, binding together the continent and uniting the two seas which wash our shores, was finished, I have seen our national triumph and exultation turned to bitterness and shame by the unanimous reports of three committees of Congress—two of the House and one here—that every step of that mighty enterprise had been taken in fraud.

I have heard in highest places the shameless doctrine avowed by men grown old in public office that the true way by which power should be gained in the republic is to bribe the people with the offices created for their service, and the true end for which it should be used when gained is the promotion of selfish ambition and the gratification of personal revenge. I have heard that suspicion haunts the footsteps of the trusted companions of the President.

These things have passed into history. The Hallam or the Tacitus or the Sismondi or the Macaulay who writes the annals of our time will record them with his inexorable pen.

Will any man deny the truth of any of these charges? Will any man find occasion to repeat them to-day? These great evils, one and all, have been corrected by the American people with the abundant resources which, under their existing constitutions, were at their command. Other evils, as grave, but not graver, demand our attention to-day. These evils will in their turn disappear when brought into the daylight before the intelligence and the justice of the American people.

The sufferings of the people have been mostly from their apprehensions, never from any actual misgovernment. Even our civil war itself came through the apprehension of the people of one section of the country of which those who waged it against the

government now think it was an unmixed good. Our political history seems to be almost made up of popular movements which are the result of the fears of the people—of evils apprehended from legislation which, in fact, are never experienced.

The history of the United States for a hundred years has been the history of marvelous prosperity and growth, which reads, even in the pages of soberest historians, like an oriental tale. Yet our political journals have been constantly filled with prediction of disaster and ruin. If anybody needs confirmation of this statement, let him read the political platforms of the party conventions of the minority. It is marvelous to see how safe, conservative, and beneficent has been our national legislation in spite of all the violence and all the extreme utterances of the journals and the platforms. This quality in our legislation is derived largely, though not wholly, from the character of the Senate under the existing method of choosing its members.

The dangers of the country are the dangers to the elective franchise—violence, fraudulent voting, fraudulent counting, intimidation, corruption, gerrymandering, the unseating of legislators with unquestioned title to their seats for the accomplishment of political objects by unscrupulous men, the use of weapons intended to protect our institutions, to subvert them. These things—not mistakes in finance, or an erroneous fiscal policy, or unwise laws of succession, or even rash and violent projects of social extremists—are the things that menace the permanence of our institutions to-day.

Every generation since the dawning of civilization seems to have been gifted with its own peculiar capacity. The generation of Homer has left nothing behind but a great epic poem, which for thirty centuries remains without a rival. Italian art had its brief and brilliant day of glory which departed and never has returned. The time of Elizabeth was the time of dramatic poetry which has been alike the wonder and the despair of all succeeding ages. The generation which accomplished the American Revolution had a genius for framing constitutions which no generation before or since has been able to equal or to approach. The features of the state constitutions framed in that day have been retained with little changes in substance, and have been copied since by every new state.

The men of that day had many great advantages for this work. They had conducted a great revolution. To prepare for it, they had been engaged for a century in discussing the principles on which self-government is founded and by which constitutional liberty is secured. They were men of English stock, trained in the principles of English liberty. There was no admixture in their body politic of men who had been born under despotic governments, and who associated the idea of government inseparably with the idea of tyranny. At their fathers' fireside the great debate of constitutional liberty had been conducted from the earliest recollection of the oldest men then living. They had the other advantage, that in framing their constitutions they were free from all party bias and from the temptation to consult party advantage, or appeal to the party prejudices of the people.

I do not, of course, claim that the people can not now amend, or that they can not now improve, our constitution. That constitution itself would be a failure if the experience of a hundred years under its operation found the people unfitted to improve it. The lives of our fathers would have been of little worth if, under the constitution they framed, there had not grown up and flourished a people who were also fit to deal with the great and fundamental constitutional principles of the state. The men who entered upon the untried field of providing by written enactment what were the boundaries and limits of constitutional power and constitutional authority in the state have left children who, after a hundred years of trial, need not fear to approach and to deal with the same great problems. But they must bring to them the same wisdom and courage and virtue. They must dare to tell the people plain truths. They must possess the wisdom of deliberate action, and arise to the austere virtue of self-restraint.

Mr. President, wherever there can be found an expression of admiration for the American constitution in the works of any great writer or thinker at home or abroad it will be found that the admiration is based upon that part of its mechanism which secures the deliberate and indirect action of the popular will instead of its immediate, rapid, inconsiderate, and direct action.

The parts of it which are everywhere the most praised and by which its framers sought especially to commend it to the confidence of the people were the constitution of the Senate and the constitution of the Supreme Court.

The great function of the Supreme Court is not merely or chiefly to afford a learned, able, and impartial tribunal for the determination of controversies between private parties upon the principles of ordinary municipal law; but it is the function of keeping the national and state legislatures alike within the appointed limits of their authority. In other words, it is a restraint upon the people's will when expressed in the form of legislation by the people's representatives, whether that will undertake an encroachment upon the individual and natural rights of the citizens or upon the domain of other appointed constitutional authorities. "It is, indeed," said Daniel Webster, "a great achievement; it is the master work of the world, to establish governments entirely popular on lasting foundations."

I do not propose to take any time in commending the excellencies of the constitution of the United States. I do not think it worth while to cite to ears to which they are familiar the praise of foreign statesmen or philosophers, of Gladstone, or of De Tocqueville, or of Bryce. These compliments are trifling and insignificant in comparison with the great fact that the American people are satisfied with it, and that they would reject with swift and unanimous indignation any proposition which they thought would change it in its essence.

I think it can be established to their satisfaction that the proposed change in the method of electing senators is in itself a change in principle and essence of the most vital character, and that its logic will lead to other changes equally vital and essential. And for that reason I have no apprehension of the success of this scheme when deliberately considered and discussed.

I am not afraid to say to the American people that it is dangerous to trust any great power of government to their direct or inconsiderate control. I am not afraid to tell them not only that their sober second thought is better than their hasty action, but that a government which is exposed to the hasty action of a people is the worst and not the best government on earth. No

matter how excellent may be the individual, the direct, immediate, hasty action of any mass of individuals on earth is the pathway to ruin and not to safety. It is as true to-day as it was when James Madison, the great advocate of the rights of the people in his time, one of the foremost among the framers of our constitution, first said it, "That, although every Athenian citizen might be a Socrates, every Athenian assembly would still be a mob."

Our fathers were profound students of history. They found that no republic, although there had been many examples of other republics, ever lasted long without a senate. The term senate implied to their minds, as to ours, a body of men of mature age and of a tenure of office which was removed from all temptation of being affected by temporary currents of public sentiment. The word senate is a misnomer when applied to any legislative body of whom these things are not true.

My friend from Oregon said the other day that the framers of the constitution distrusted the people. He said that one of them who declared in the convention that legislation ought to be removed as far as possible from the immediate action of the people would be remanded to private life nowadays with a promptness that would be almost grotesque. Why, Mr. President, that senator represents a state—one of the new states of the union—that has incorporated the doctrine of that utterance into every department and arrangement of her constitution more completely, I think, than any other state in the American union. The senator overlooks what the author of the utterance with which he finds fault had so profoundly studied—the difference between the immediate action of the people upon legislation and administration and the expression of the sober and deliberate will of the people through instrumentalities whose own sobriety and deliberation are thoroughly secured.

Does my friend really think that the authors of the opening sentences in the Declaration of Independence, who rested their cause on those sublime and eternal truths in their great controversy with the mother country, who placed those truths at the very foundation of their new government, who pledged their lives and fortunes and sacred honor to maintain them, distrusted the



people? They trusted the people when they made those great declarations of natural right. They trusted the people when they declared the equal right of every human being without exception of race or color or nationality or rank or fortune. But they trusted them also with as profound and implicit a trust when they submitted to them constitutions, both state and national, filled with restraints which alike secure minorities and individuals against injustice and oppression from majorities, and secure the whole people against their own hasty and inconsiderate action.

No, Mr. President, it is not because the framers of our constitution distrusted the people; it is because they trusted the people that they confidently asked their adoption of a constitution which compelled them to deliberation, to sober thought, to delegated power, to action through selected agencies and instrumentalities, to thinking twice before acting once. It was not Madison or Hamilton, it was the people of the United States who ordained and established the constitution.

I have no respect for the notion that the people of the United States need to be flattered or cajoled, or that they are impatient of the necessary restraints of constitutional liberty. Truth, frankness, and courage are the avenues to their confidence. There is but one way to discover what will be popular in this country, and that is to discover what is right. There is but one road to the enjoyment of the confidence of the people, and that is to counsel them to wise, honest, and safe policies. The public man who appeals to temporary opinion or who flatters temporary passion will find his hold upon power as temporary and shortlived as are the instrumentalities by which he seeks to obtain it.

It has been said in this discussion that the constitution needed amendment at once. This is true; but all amendments were in the direction of placing checks on the power of the people and declaring that there were certain things the people should not be permitted to do. The great statesmen who framed the constitution placed in it certain checks and safeguards against the popular will. The greater people to whom they submitted it perfected it by inserting other safeguards still.

I stated just now that the term "senate" implied to the apprehension of every studious man certain essential conditions; but

the Senate of the United States, as established by our constitution, implied something more than this.

First, our fathers wished to secure a dual legislative assembly. With the exception of Dr. Franklin and his associates in the Pennsylvania delegation, who are understood to have cast a formal vote out of deference to him, it was thought best to provide a dual representative assembly. Every act of the legislature was to be twice considered and have the approbation of two different, separate houses.

Second, these two houses were to have a different constituency. So every proposed law must run the gauntlet of two diverse interests and be judged from at least two points of view. Every state in the construction of its legislature has maintained these two principles. The American people, I suppose, are now agreed upon them with substantial unanimity.

Third, the Senate is expected to represent the equality of the states. This is the one principle which would never have been yielded by a majority of the states when the constitution was made, and which has been made eternal as far as possible by the provision that it shall not be changed without the consent of every state.

Fourth, the Senate was to represent deliberation in the expression of the popular will by the length of the term of office of senators and by its removal from the direct popular vote in the method of choice. It is this point at which the Senate is now attacked.

The constitution of the Senate secures the applications of all these principles in the four great constitutional functions of the national government—in legislation, in the making of treaties, in the appointment of the great executive officers, and in impeachment. The last of these powers has happily not often been resorted to in our history, but was regarded by the framers of the constitution as essential for the security of the whole. As James Monroe well said:

The right of impeachment and of trial by the legislature is the mainspring of the great machine of government. It is the pivot on which it turns. If preserved in full vigor and exercised with perfect integrity, every branch will perform its duty.

Each of these the Senate shares with other departments of

the government, and to each of them it contributes the great and conservative principle which our fathers thought essential to secure to all generations and amid all popular temptations and excitements the government they framed against the evils by which all former republics had perished.

The constitution also carefully provides in the case of the Senate, as in the case of the House, that the manner of the election shall be prescribed by the authority of the nation for whom the persons selected are to legislate.

It will be seen, I think, very clearly that the change proposed destroys the essential character of the Senate in each of these particulars.

It substitutes a direct election by the people for an election by the legislature.

For a selection by public officers to whom the great public duty of state legislation is intrusted there is to be a selection and nomination by conventions composed of persons without other responsibility. This, in most cases, will be the mode in which the majority, practically, will make its choice.

For a selection by men who are themselves selected under strict legal provisions there is to be, therefore, practically a selection by men who are not chosen in pursuance of any law.

Instead of selection by men under oath of office there must be a choice by men upon whom no oath is imposed.

For a selection by men of whose action there is a record the choice is practically to be made by men of whom no record exists.

For a choice in a manner prescribed by national authority, selection will be made by men who may act by proxy.

For a choice by a permanent body there must be a choice by a body lasting but a day.

For a choice in a manner prescribed by national authority, there must be a choice in a manner prescribed in no authority whatever.

For a choice by a body acting by majorities, there must be substituted, in the end, a choice by a plurality.

For a choice by a body representing all localities in a state where different local interests are fairly represented, there must

be a choice by sheer force of numbers, where the popular masses in great cities will have an undue and disproportionate weight.

Instead of representing different constituencies to secure the different interests in legislation, the Senate and the House are to represent constituencies of the same kind, differing only in size.

From the change in the manner of election will surely and inevitably, in my judgment, follow the destruction of the equality of the states in the Senate. It is true the constitution now provides that no state shall be deprived of its equal vote in the Senate without its consent. But this provision relates to a Senate to be constitutional and selected in the old constitutional manner, and will never be long tolerated, in my judgment, by the large states under the proposed arrangement.

The state legislatures are the depositories of the sovereignty of the states. They are, in theory, and I believe in general in fact, composed of the picked and chosen men of the communities from which they come. The men who make up the state legislatures are chosen by their neighbors. They are chosen by men who know them or can know them. There have been exceptions, but in general they have been honest, wise, faithful, and just. The pages of the statute books of the forty-four commonwealths are in general without a stain. They can be read by the patriot without a blush. I am not afraid to compare them with the two hundred and fifty Parliaments through which, for eight hundred years, the freedom of England—

Has broadened slowly down,  
From precedent to precedent.

There have been many things we might well wish were otherwise. In the chambers where all men are equally represented, what is worst as well as what is best of humanity will sometimes find its representative. The ambition, the love of power, the party spirit, the private greed, the popular passion, injustice, and tyranny will occasionally appear there as elsewhere. In what spot in human history are they not found? But I am willing to take the legislation of any American state which is a quarter of a century old and compare it with the legislation of any government possessing a legislature in any period of its

history. Why, in the British House of Commons Disraeli said that long after the close of the American war, and within the memory of men who heard him, a member of the government stood below the gangway at the final adjournment of the Parliament and gave a £500 note to every member who had supported the administration.

You and I can well remember when bribery was a common and necessary method of getting a seat in the English House of Commons. But English constitutional liberty and English constitutional government have not proved a failure.

Do you propose to strip the state legislatures of any other function of their sovereignty? Can you not trust the men who make all the laws upon which the safety of property, the marriage relation, the security of the home, the administration of the schools, taxation, freedom of religion, the punishment of crime, and everything else which enters into the comfort and honor of private life are depending with the choice of senators because my honorable friend from Illinois thinks that, in the experience of the people of that excellent state, the selection of senators under existing conditions has been unsatisfactory?

What is the alternative, and what must be the alternative? What is the alternative proposed? What must be the necessary and only alternative that can be proposed for the exercise of this great function of local sovereignty? The state legislature is a failure, we are told, and is not fit to be trusted any longer. Who are to nominate our senators? To whom is the practical selection to be intrusted? Whatever may be the theory, the voting population of the state of New York, or of the 10,000,000 who within the lifetime of some of us will dwell within the borders of that imperial commonwealth, are not expected to gather together and put in nomination a senator by direct action. No one hall will quite hold them, even were it as flexible and expansive as the court room when naturalization is going on.

The practical choice of the senator must be made by nominating conventions. Are not these bodies quite as likely to be susceptible to mistakes or to corrupt manipulation as a state legislature? They gather together at midday, chosen by no con-

stituency whose action, or even the freedom or purity of whose choice, can be regulated by law. The men who gather are to perform but a single function, to which there is attached ordinarily little responsibility. They can not be instructed by their constituents. Their functions may be exercised by proxy. They are not amenable in their individual action to a sound public opinion.

There is no record of the individual vote, or any means of correcting a mistake or fraud. They gather in the morning, and disperse when the mists of evening rise. And it is to these bodies that the choice of the men who are to compose what we are fond of calling the most august body on earth is practically and in the ordinary course of things to be committed. It is these bodies who are fitter to be trusted than the legislatures to whom all the dearest interests of the people of the states are committed.

Cicero, in his oration for Lucius Flaccus, attributes the decay of Roman and the destruction of the Grecian liberty to the substitution of the turbulent popular assembly for the deliberative chamber in wilding the political power of the state. He has left his terrible picture of the popular assemblies of his time as a pregnant lesson for all mankind.

It may be said that governors and state officers and representatives in Congress are selected in this way now. That is true. But have all nominations of governors and representatives in Congress been on the whole more satisfactory to the people than the selection of senators for one hundred years? I think that when any one of us wishes to arouse the state pride of the people he represents by enumerating the great men who have adorned their history we find that the names of the men who have sat in these seats arise to our lips quite as naturally as the names of the governors or the representatives in Congress, however illustrious.

When my colleagues here or my colleagues in the other house wish to stir the hearts of a Massachusetts audience they are quite as likely to speak of Webster, and of John Quincy Adams, of Charles Sumner, of Rufus Choate, or George Cabot, and of Edward Everett and John Davis as of anyone in our list of

governors, excellent as that list has been. Is there any other state of which the same is not true? And nearly every one of the great men who have been elected to the House by the choice of the people has also sat in the Senate. The people who by any constitutional method of choice will in any generation send to this chamber an ignoble or unworthy senator will, I will venture to say, be found to have at the same time no better timber in their executive chair or in the House of Representatives.

It is a little difficult for a member of this body, without some violation of good taste or self-assertion, to state what we all think of the character which the Senate has maintained from the beginning of the government and of its title to the confidence of the people. But I am not afraid or ashamed to invite a comparison of the men who have sat in these seats and represented my own commonwealth, down to the date when the present senators took their places, with any line of dukes, barons, or princes, or emperors, or popes who have successively filled the seats of any legislature or the executive chair of any commonwealth, whether these persons held their titles by virtue of the noble descent or royal favor or of the favor of the people themselves.

I do not believe the people of Massachusetts—and the same challenge may be given with confidence in behalf of any other American state that has a history—will accept this invitation to change the method of choosing the senators, which depends, as I have said, not only upon the claim that the legislatures are unfit to be trusted with this duty, which is one among the chiefest functions of sovereignty, but that the Senate of the United States has, upon the whole, been a failure.

I do not believe the people of Massachusetts are quite ready to discredit their own general court with its two hundred and sixty years of legislative history, and give their confidence instead to a political convention which gathers in the morning and disperses when the mists of evening arise, whose members are without an oath of office, without a record, without legal restraint upon their election, who have no accountability to their representatives, or to anybody, without even the requirement that they shall be citizens.

And I do not believe that they are quite prepared to say that, on the whole, they are ashamed of the senators who, by the free choice of their legislatures, have for a hundred years represented them in this great national council.

It is a poor, cheap flattery of the people, this notion that suffrage is to be deified and that the results of suffrage are to be degraded; that the people have all wisdom and all honesty, but that their trusted agents are to be bought or cajoled. Will it not be the same people who choose the senators and who choose the legislatures? Is there any evil influence which will operate upon the legislature which will not operate with like effect upon the convention?

But it is said that the choice of a nominating convention is but the first step; any mistake it may make will be corrected by the people. But, Mr. President, except in most extreme cases, the correction must be worse than the evil which is to be cured.

At what cost are the people to vote down the nomination made by the convention of the party which is in the majority because of their disapproval of a man who is its candidate for the senate? Of course, the plurality system will be applied to this, as to every popular election. The people, then, must manifest their disapproval of an unworthy candidate regularly nominated only by transferring their support to the candidate of another party. It is not likely that any man who would get the nomination of his party convention will be so unpopular that substantially the whole membership of his party will refuse to support him. What will happen will be the choice of the candidate of another party.

Now, what does this mean? It means that the people of a state are to give their support to doctrines, measures, policies, political principles of which they disapprove solely because of their opinion as to the individual character of the man who represents them. We have a party in Massachusetts who think a protective tariff a monopoly, extortionate, robbery, and plunder of the many for the benefit of the few. They think it operates grievous and intolerable injustice in its application to the individual citizen, and that its effect upon the national welfare is immoral, evil, disastrous.



And yet if any of them happen to think that a man nominated by their party to represent these opinions is not a good man, they are to send to Washington a man who supports all of these things simply because of their opinions as to an individual character. They must prefer a man who makes his country the instrument of robbers, monopolists, plunderers, and evil managers of finances, who is amiable and honest in private, over a dishonest and unamiable man who will put an end to all this iniquity.

In other words, the correction of the mistakes made by the political convention is only to be made at the cost of destroying the character of the country because of the character of the candidate. The amiable man who has no objection to dishonest and fraudulent elections is to be preferred to the unamiable man who wants honesty and fairness in elections. I have no doubt but that in extreme cases a man may be nominated by mistake, by deception, by public indifference, as a candidate of my party, whose personal character is such that it would be my duty to refuse him my support, whatever happened. But those cases will, I believe, be extremely rare, and if the disease to be remedied be wholly evil, the remedy itself is almost as bad.

Mr. President, the experience of our first century has, it seems to me, most amply vindicated the constitutional purpose which resulted in the Senate. It is not expedient to have two houses both directly dependent on the popular will. I would not speak with disrespect of the House of Representatives. Every American who knows the history of his country must feel a just pride in that great assembly, which has been and will hereafter be the direct representative of the people's will. The names of its great leaders—of Clay, of John Quincy Adams, and of Thaddeus Stevens—rise to the lips when we would stir in the hearts of any American assembly the emotion of national pride or the love of constitutional liberty.

If there be anything in its conduct which at any time impresses the thoughtful observer unpleasantly, I think he will admit that, on the whole, it bears comparison with the French Assembly, or the great representative body of Germany, or even with the British House of Commons. But the constitution of that

House has compelled it to resort to many devices and to submit to many inconveniences. We should all be sorry if we are compelled to submit to them in the Senate. The freedom of debate in the House of Representatives is gone. What I sometimes think is even of more importance, the freedom of amendment is gone also.

Both these great essentials to wise and honest legislation exist only to a very limited extent, and then at the pleasure of the majority. It is here only that the freedom of debate is secure.

From all this has grown up the most pernicious of unconstitutional practices, that of filibustering, which was introduced originally to prevent hasty or arbitrary action by the majority, but is now used to prevent or overthrow the rule of the majority altogether. So that the course of legislation in that House to-day is this: A few great measures, to which the party in the majority is agreed, are carried through by special rules adapted for the purpose, the minority being deprived of all rights of reasonable debate or reasonable amendment.

All other measures, however important, however salutary, however much desired by the majority of the House and a majority of the people, are at the mercy of a small and resolute minority. In the last House the antioption bill, which I regarded as an evil and pestilential measure, and the bankruptcy bill, which I regarded as a wise and salutary measure met the same fate in spite of the desire of a clear and large majority of that body for their passage. This condition of things is unrepblican and undemocratic, and if continued long must result in the overthrow of republican government itself.

Another evil of like character and of equal magnitude has grown up from the necessities, or the fancied necessities, in the transaction of business in the House of Representatives.

The question whether an important measure shall be submitted to the House for consideration has to be determined, not by individual members, not by chosen committees, not by the majority of the House itself, nor even by its unanimous consent in many instances, but by the will of the presiding officer alone. He determines, at his sole volition, what members shall be recognized and what measures the House shall be asked to consider.

It is notorious that many measures of vast importance, many measures of relief demanded by justice and by the national good faith, abide session after session and Congress after Congress, having received the support of this body, and which would have received the unanimous consent of the other if they could be taken up, which never can be heard in that House because of the refusal of its presiding officer to submit them.

Now, Mr. President, habits like this in the conduct of legislation do not grow up and keep their place without some grave public reason, or at least some grave public necessity. It may be that a body which represents, as does that House, a temporary and sometimes fleeting popular purpose requires such restraints and chains and fetters as these for the public safety. I think we may well pause before we give to this body a character which will require such obstacles to be placed in the path of its free action. The time may come—some of us thought that it was near at hand—when it may be necessary to introduce even here a rule for a limited and carefully guarded *clôture* in debate.

Every member of this body would regard that as a most painful necessity. If that time ever comes, it will be because rules established for the protection of freedom of action in the Senate have been abused to prevent and subvert it. But I hope and believe the time will never come when any question will be taken in this Senate in regard to which every senator shall not have an opportunity to express fully and freely his opinion in debate, and in regard to which he shall not have the fullest opportunity to offer amendments as seems to him desirable.

I suppose there have been a few instances of corruption of state legislatures in the election of senators. In a few cases such attempts have been exposed and failed in the legislatures themselves. In a few cases they have been detected here. In very few, indeed, they have probably been successful. I thought the Senate touched its low-water mark when a few years ago it refused to investigate one of them. It is a great mistake to suppose that nominating conventions will be much more easily dealt with, or that popular elections have been or will hereafter be any more exempt from such influences. Have popular elections in ancient republics, or in England, or here been freer from corrup-

tion than elections through delegated and chosen assemblies? Mr. President, there will never, for any length of time, be venal legislatures without a corrupt people behind them.

Besides, there are, unhappily, other modes of destroying the freedom of elections, to which popular elections are exposed, from which legislative assemblies are free. The great prize of the office of senator is, if this amendment be adopted, to be added to the temptations which, unless many a report in the other House be without foundation, have induced in very many instances in our history false counts, fraudulent naturalization, personation of voters, fraudulent residences, forged returns, intimidation, and mob violence. These attend elections in great cities and in states where race differences still add their bitterness to the struggle for political power.

There have been, it is estimated, more than three hundred and twenty contested-election cases in the House of Representatives. They have been the scandal and reproach of our political history. Excepting a very few creditable examples, they have been decided for partisan considerations, as like cases were decided in the British House of Commons until jurisdiction was transferred to the judges.

I suppose it is not intended to take from the Senate the power to judge of the election of its own members. Until now the contested-election cases in the Senate have in general depended upon constitutional or legal questions, or upon facts easily ascertained and established. But if this change be made, the Senate, in every close election, must undertake investigations which will range over an entire state. A contest in New York, or Pennsylvania, or Illinois, or Ohio may put in issue the legality of every vote cast in a state of three million, or five million, or perhaps, within a generation, of ten million people. There will never be a close election without a contest here. Unless human nature shall change, the result of these contests will depend on partisan considerations and will shake public confidence in the Senate to its very foundation.

Let no man deceive himself into the belief that if this change be made the Senate of the United States will long endure. Another legislative system will take the place of that which our

fathers devised for us, and which for a hundred years has been the admiration of mankind. The method of election is indispensable to secure the peculiar quality of the body to be elected. The change will lead to an attempted overthrow of the equality of the Senate.

The states never consented to perpetual equality in a Senate made up in any other way or on any other principle of selection. They never agreed that there should be forever between New York and Maine an equality in a legislative chamber which is only a house of representatives made up of differently constituted districts. In twenty years the state of New York will have ten millions of people, with a vote for every five persons. Do you think they will long endure to submit to equality in legislation, in the making of treaties, in the appointment of great executive officers, in the power to punish and remove great offenders, in the making of war, and in the making of peace, with the 8,000 voters of dwindling Nevada, when the two states are simply two representative districts, whose only difference is that one is two hundred and fifty times as large as the other?

New York submits to this loyally to-day. She has pledged her eternal allegiance to the constitution. She can not change it without the consent of every other state. It is so nominated in the bond, and is the price she pays for being the Empire State of an imperial nation. She can not escape it without a revolution. But open to her this door. Tell her that the Senate, as Hamilton and Jay conceived it, is gone. Tell her that it is no longer to be made up of chosen men, selected by chosen men, to be removed one degree from public impulse and passion, and representing the deliberate, sober, and instructed will of the people. She will tell you that her constitutional obligation has gone also and that the equality of the states in the Senate may henceforth be abolished or modified like other provisions of the instrument. "I never promised," she will tell you, "to submit to it forever under your new arrangement." *"Non in hac foedera veni,"* or, as my great predecessor on this floor used to translate it: "I made no such bargain, and I stand no such nonsense."

Various methods of electing senators were proposed and thoroughly discussed in the convention, but the vote for the present

method was at last unanimous. I think the suggestion of another method of choice is of quite recent origin and is more the outcome of circumstances that are not only recent, but will be temporary. Chancellor Kent, volume 1, page 225, says:

The election of the Senate by the state legislatures is also a recognition of their separate and independent existence, and renders them absolutely essential to the operation of the national government.

The Federalist, number 62, written by Hamilton, says:

It is equally unnecessary to dilate on the appointment of senators by the state legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment and of giving to the state government such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

Hamilton adds in the same number of the Federalist:

In this spirit it may be remarked that the equal vote allowed to each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual states and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small states, since they are not less solicitous to guard by every possible expedient against an improper consolidation of the states into one simple republic.

The convention which framed the constitution, after some consideration, unanimously rejected the plan of choosing senators by the people, and unanimously adopted the present system. Judge Story (constitution, section 704) mentions as one of the reasons that this "would increase public confidence by securing the national government from any encroachments on the powers of the states."

This idea deserves to be dwelt upon. The state legislatures are the bodies of men most interested of all others to preserve state jurisdiction—more than the governors, who may be expected to aspire to national employments. It is well that the members of one branch of the legislature should look to them for their re-election, and it is a great security for the rights of the states. The state legislatures will be made up of men whose duty will be the administration of the state authority of their several state interests and the framing of laws for the government of the state which they represent. The popular conventions, gathered for the political purpose of nominating senators, may be quite otherwise composed or guided. Here, in the state legis-

lature, is to be found the great security against the encroachment upon the rights of the states.

How many instances there have been in our history in which an immediate popular vote would have led to disastrous consequences, but the sober second thought of the people has led to the path of safety. Mr. Madison said in the constitutional convention (see Madison Papers, vol. 2, p. 847):

If the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the convention could say what the opinions of his constituents were at this time, much less could he say what they would think if possessed of the information and lights possessed by the members here; and still less what would be their way of thinking six or twelve months hence.

Suppose that if, instead of action through a convention, the adoption of the constitution itself had been submitted to a direct popular vote, it would have been rejected by a majority of the states, certainly by the states of Connecticut, Massachusetts, New York and Virginia, the four great states without whose cooperation the establishment of national government would have been impossible. How many times great waves of delusion have swept over the land, whose force was broken by the sober discussions of deliberative assemblies. The great anti-Masonic movement of 1835, the Know-Nothing movement of 1854 and the years that followed are but two out of many examples.

Neither Charles Sumner nor Salmon P. Chase could have been elected by a popular vote when they were first chosen. Mr. Sumner certainly would have gone down before the Know-Nothing movement, which he so bravely breasted, if the question of his re-election had been submitted to a popular vote in Massachusetts in 1855. It is quite doubtful if Mr. Webster himself would have been chosen by a direct vote of the people of Massachusetts at any time after 1850.

It is the purpose and the effect of this constitutional amendment to overthrow state autonomy in two particulars, in regard to which the state is to be bound and fettered for all time unless two-thirds of the two Houses of Congress and three-fourths of the states shall hereafter consent to retrace their steps.

First, the states, in many instances, distribute their political power evenly. The people are represented in the state legislatures by their neighbors and associates, by men whom they know

and whom they respect and who represent the local feeling.

This proposed amendment requires the voice of the state to be uttered by masses of its citizens, and removes political power to the great masses who are collected in our cities. Chicago is to cast the vote of Illinois, Baltimore of Maryland, New York City of the state of New York, and Cincinnati of Ohio. The farmer class, which now have their just weight, will be outweighed by the dwellers of the great towns where the two extremes meet—great wealth and great poverty—and combine to take possession of the affairs of the government.

Second, plurality must take the place of the majority. The opportunity for third parties to have a just and reasonable weight will be destroyed.

Besides, there will be larger opportunities for fraud and crime in elections. These will be easy to commit and hard to be inquired into.

Mr. President, a people has always a distinct individual character. A city, a state, a nation, is very human. It has its hopes, its fears, its passions, its tastes, its prejudices, its resentment, its affection, its hasty impulse, its sober judgment, its deliberate will. We attribute to it the moral qualities of patience, endurance, and self-sacrifice. These qualities are made up of the prevailing temper of the men and women who possess them, but they are of a higher standard than is attained by any individuals except the best.

The Spartan or the Swiss or the American quality is as well known and as individual and distinct as that of the great heroes of history. It is this trait that causes the affection which we feel for our country. We love it with an individual love. We cherish it with a supreme affection. Men die for it as they would die for wife or parent or children. It is therefore no dishonor to the American people that we demand that in the conduct of their great affairs they shall do what every wise man and every good man and every brave man is expected to do in the conduct of his own.

It is no affront to the American people to require that they shall be asked to secure that deliberation, that caution, that putting aside of hasty impulse and passion in their important affairs



that every wise man practices in his own. The republic is no mushroom growth. It is an oak which adds ring to ring through many a summer's heat and winter's cold. Its glorious gains come slowly that they may come surely. The deliberate will of the people is, however, sure and certain of accomplishment. Whatever the American people have thoughtfully, wisely, and patiently considered and designed and resolved upon, that result is sure to be accomplished. And our present constitutional forms and mechanisms have always proved abundantly sufficient for its accomplishment. And it is hardly too much to say that the great beginnings of popular movements for liberty have been in the Senate.

Mr. President, it is not true that the Senate, in the sober judgment of the American people, has failed to meet the just expectations of the generation who framed and adopted the constitution. It has responded quite as speedily and quite as directly to the sober conclusion of the popular judgment and to the settled desires of the popular heart as has the other House or as has any state legislature.

It has originated far more than its proportion of the great measures in our legislative history, for the benefit of the people, which are found in our statute books.

It has resisted what is evil, but it has also initiated and accomplished what is good. This was never more true than in recent years. It is not too much to say—and I assert it without fear of successful contradiction—that—

If any private citizen wants justice;

If any executive officer wants to improve administration;

If any man desire new and wholesome laws;

If any man wants the public mind awakened by discussion—he seeks and he finds what he desires in the Senate. Why, even the friends of this amendment to the constitution come here for its first serious discussion.

It is said the recent elections of senators in states lately admitted have been attended with some occurrences that tend to bring the present method of choosing them into disrepute. There has been no investigation into this matter. No man here can say how much truth there may be in these reports, in the charges

of suspicions which appear in the columns of the newspapers. The fact that those elections have resulted in a way some of us do not like is of little importance.

The only questions are whether whatever evil may have attended them is likely to be permanent, and whether the same evils would not have existed if the choice had been by popular election, and have not existed to an equal degree in the choice of governors and representatives in Congress. When we consider the circumstances of these new communities, it is astonishing and gratifying that they have done so well. It seems to me that the inauguration of their governments was creditable to them. Their population is spread over large spaces of territory.

The people of the different parts of the new states are unknown to each other, and the representative or senator in the state legislature is frequently little known to his constituents. Mingled with the honest and enterprising men who have chosen their residences in the honorable ambition to achieve fortune for themselves, to perform every duty of good citizenship, to build on sure foundations states of the best kind, are adventurers, criminals, men from all parts of this continent, and from Europe and Asia, some of whom have left that country for their country's good. They are not worse than other communities in this respect, but they have less opportunity to know each other. They will compare most favorably with the dense populations of some Eastern cities. But the people of this class are there.

These communities are called upon to take upon themselves the great function of government under circumstances which would have rendered success impossible to our ancestors at Plymouth or Boston or New Haven or Philadelphia. Suppose that, added to the chosen and venerable men who founded the old thirteen states, there had come across the sea adventurers from all Europe; suppose that on the first organization of their legislative bodies had depended the political ascendancy of one or the other of the contending factions who were struggling for the political control of all Europe; suppose that every passion and ambition and jealousy and evil desire which entered into such a controversy had followed them into their new domains and had blazed even more fiercely among them; suppose men of

large wealth were ready to corrupt them to the service of their own personal ambitions; suppose members or emissaries of the national committees of great parties had seated themselves with their money bags at their gates—is it likely that the Puritans at Plymouth, or the Cavaliers of Jamestown, or the Quakers of Philadelphia would have succeeded any better in founding their states than our countrymen and brethren in the far west? But all these things will pass by. The people will come to know each other. They will understand their permanent interests. Combinations of dishonest men will be powerless before the honesty and intelligence of the people. Property will increase. Every honest and industrious man will get his share, and the interests of property will have their due and just influence. The people will choose legislators whom they are willing to trust with their local concerns, and so fit to be trusted to select the men who are to wield their share of national power.

I do not think the American states that have come into the union within the last twenty-five years have any reason to shrink from a comparison with any others in respect to the honesty, the capacity, the industry, the fidelity, or the wisdom of the men who have represented them in the national councils. While I have differed with them, or with most of them, upon some very important questions, I believe that if we had had a Senate and a House composed wholly of the representatives of these new states our national legislation would have gone on well, and would have been, in general, acceptable to the people of the whole country.

The argument of the able senator from Illinois, which I have read with much care, is summed up in three propositions:

First. That the people of Illinois believe that under existing conditions the election of senators by their state legislatures has failed of satisfactory results.

Second. The framers of the constitution did not properly estimate the intelligence and capacity of the then people of the several states. Most of the members of the convention were themselves still under the influence of inherited aristocratic ideas, and were without experience of the successful workings of popular institutions.

Third. The legislature of Illinois before 1847 was omnipotent and abused its great powers. The constitution of 1847 deprived the legislature of its electoral powers and conferred the election of governor and judges upon the people. The names of the illustrious men who have since composed the supreme court of Illinois, elected by the people, have justified the highest hopes of those who favored the innovation.

I have stated these propositions in the senator's own language. They contain his entire argument. Let us look at them. "The election of senators in Illinois under existing conditions," says the senator, "has failed of satisfactory results." He invites us to a contrast with the results obtained by popular elections since 1847, under which governors and illustrious judges have been chosen by the people.

The senators of Illinois in 1847 were Stephen A. Douglas and Sidney Breese. Does the senator doubt that Stephen A. Douglas would have been chosen by the people of Illinois, if the question had been submitted to them, on every occasion when he was chosen by the legislature?

Mr. PALMER. Will the senator allow me to answer that question?

Mr. HOAR. Certainly.

Mr. PALMER. Judge Douglas would undoubtedly have been chosen by the people at any time except at his last election, when the popular vote was against him.

Mr. HOAR. I do not so understand it. Was not Sidney Breese, successively justice and chief justice, one of the most illustrious of the illustrious men whom the senator says the people of Illinois elected to the bench? They were succeeded by James Shields, the gallant soldier of Irish birth, who represented three states in this body, and by William A. Richardson. Will it be claimed that either of these eminent men would not have been chosen if the people could have chosen them? Next came Lyman Trumbull and Richard Yates. Trumbull was elected by the people to the supreme bench in 1848 and Yates was governor. Then came Richard Oglesby, three times chosen governor, and John A. Logan, the most illustrious volunteer soldier of the war and the favorite candidate of Illinois for the presi-

dency. I do not think we have quite yet reached the "failure under existing conditions."

Next we have David Davis, three times chosen judge by the people, who came at last to the Senate from the bench of the Supreme Court of the United States, where Abraham Lincoln had placed him. Can the senator from Illinois place his finger upon one of this illustrious line, who did grace and honor to the Senate, who was not among the foremost citizens of his noble state or who would not have been chosen if the choice had been by the people? Then comes Cullom, the friend and pupil of Abraham Lincoln, twice governor by the choice of his fellow citizens, as he has been twice senator by the choice of the legislature. Has the senator yet reached the period for his argument that the legislative selection of senator is on a lower level than the choice of the people for governor or for judge?

There remains to be considered the case of the senator himself. I might otherwise feel a delicacy in discussing it. But the facts strongly support my argument, and, as stated in his ample autobiography, are so highly creditable to him, that I must be pardoned for alluding to them. After a career of brilliant civil and military service, and after having been tried for four years in the office of governor, he was nominated for governor again in 1888. The ungrateful people of Illinois defeated him by a majority of 38,000 on a direct popular vote.

Mr. PALMER. I ask pardon. Will the senator please state again the majority?

Mr. HOAR. Thirty-eight thousand in 1888.

Mr. PALMER. My colleague [Mr. CULLOM] will furnish different figures.

Mr. HOAR. I have taken the figures very carefully, taking the votes of all other parties.

Mr. CULLOM. As my colleague [Mr. PALMER] has referred to me, I will state that, so far as the two prominent candidates were concerned, my colleague and his opponent, Governor Fifer, my colleague was defeated for governor by about 12,500 votes, if I remember correctly.

Mr. HOAR. At any rate, it is enough. The people of Illinois defeated him by 12,500, without counting the third party

or the fourth party vote; and then he was elected senator by the legislature. The people of Illinois elected a legislature whose majority was originally opposed to him. But on conference and comparison of views he was finally selected.

Now, if the senator from Illinois means to affirm that this, the latest result of choosing senators in Illinois by the legislature, is unsatisfactory to the people, we who know the value of his service must be permitted respectfully to dissent.

The senator from Oregon [Mr. MITCHELL] has brought to the discussion of this interesting question the great industry and the great ability which always characterize his contributions to our debates. I have carefully read his argument of April 22, 1890. I think he summed up in that all the chief reasons for this change. He begins with a history of the proceedings of the convention which framed the constitution, so far as they deal with this subject. As I have already observed, he imputes to that convention and to its members a distrust of the people. I differ from him in that opinion, as I do from the senator from Illinois [Mr. PALMER], who utters the same opinion.

I think the members of the convention exhibited a sublimer trust in the people than any other body of men who have been gathered together in human history. They were, some of them, the same men who signed the Declaration of Independence in 1776. They were inspired by the same faith that inspired the Congress which, as its final act, ordained that great security of freedom—the Ordinance of 1787. They were laying the deep foundations of what was hoped would be an eternal structure. Every stone, every beam, every rafter, was laid in confidence of the wisdom and the justice of the people and their eternal capacity for self-government. Trust in the people was with them an article of profoundest religious faith. They derived the great doctrine of human equality, which they placed in the forefront of the Declaration which made us a nation, from the word of the Creator of mankind himself, as they read and interpreted it.

But, as I have already said, their confidence in the people was like the confidence we feel in a wise, just, and righteous man, capable of self-government and understanding and self-

restraint, who in the great actions of life exercises for himself deliberation, reflection, self-control. It was the immediate action of the people which they deprecated. It was final and absolute self-control and self-government which they ordained and secured.

The senator from Oregon said that the constitution these men ordained has required amendment. He is amazed that the amendments were not understood and incorporated in the constitution by the men who originally framed it. But the senator has failed to see that every one of these amendments, from the first to the fifteenth, is an amendment in the direction of putting new control upon the immediate and direct action of majorities. Every one of them secures the rights of the people by a restraint upon their power. Every one, with a single exception in the change of the method of electing the president—adopted after the election of Mr. Jefferson—both the original twelve and the three that have been adopted in our time, are simply declarations of those things which, for the welfare of the whole people, no majority under our constitution shall be permitted to do.

The senator goes on to announce, as the foundation of his argument, the principle that no system can be properly termed free or popular which deprives the individual voter of his right to cast his vote directly for the man of his choice for any office, whether it be a state officer, member of the national House of Representatives, United States senator, or president. And the logic of his position compels him to avow this doctrine. So that, if the people go with him, this amendment must be followed by others, under which the United States judiciary and the president and the vice-president are to be chosen by the action of a direct popular majority. This may be sound policy; but when it is established, the constitution of the United States is gone.

The senator further adds that in his judgment lodging this power in the state legislatures tends to the election to the legislature of a man solely because of his opinions as to election of a senator, and the "question as to his qualifications for the business of the general legislature, or the views he entertains with reference to the great material interests of the state—internal

improvements, assessments, taxes, revenues, corporations, appropriations, trusts, municipal affairs, salaries and fees of officers, civil and criminal code, apportionment, and other like important subjects—are wholly lost sight of.”

I can only oppose to this opinion of my honorable friend my own opinion that this is a very important consideration in favor of the present system. I think that it is best to commit this great function of choosing the members of this body to the deliberate and careful judgment of men who are trusted with every other legislative function of sovereignty, and not to adopt a method which in practice will commit it to men whom the people trust with nothing else.

Mr. President, if you take from the men who now represent the sovereignty of the state in all its domestic relations the right to choose the men who are to exercise its share of national legislation, you will diminish their weight and character. You will get for the discharge of both duties men less fitted to be trusted with either.

The senator from Oregon says that he finds, as a chief reason for promoting the change—that he finds everywhere discontent and unrest. If he means that he finds everywhere discontent with the present method of choosing senators, or with the existing constitution of the United States, or even among thoughtful men with the Senate itself, I must express my dissent from his opinion. On the contrary, I believe that any intelligent assemblage of American people will unite as readily and enthusiastically in praise of their national constitution as at any time since it went into operation. I believe, if called upon to declare what it is in the constitution they especially value, they would now, as ever, state that among the chief titles to their regard are the Senate and the national judiciary.

If the senator means that there is a general feeling of dissatisfaction with existing conditions, that our social life is disturbed, that the classes in society are getting into conflict with each other, that the people are in that frame of mind which precedes a great revolution—while I think he exaggerates very much the state of feeling, so far as he is right I think he urges an especial reason for not changing the constitution to-day.



Certainly such a change should be made soberly, quietly, deliberately, and by men who can look through the history of a century, and not look merely at the fleeting and passing evils.

I have read also with great attention the argument upon this subject by the accomplished and thoughtful senator from Indiana [Mr. TURPIE]. He thinks that neither of the three departments of the national government is now controlled by the people. If he means that the choice of neither is directly controlled by the people, I would remind him that not only one of our two legislative branches is the direct popular choice according to numbers, but that action of the electoral colleges is, in fact, a direct expression of the popular will. So that the House of Representatives, which shares equally with the Senate in power of affirmative legislation, and the President, with his executive and treaty-making powers and his veto upon all legislative action, are the result of direct popular choice.

If he means that, when our three departments of government are chosen, their action should be the result, not of the individual conscience and judgment of the legislature, of the executive, or of the judge, but should respond to the present and instant pulsation of the popular heart, I answer that I think he is wrong in desiring a government so constructed or administered.

If the senator's doctrine be sound, it seems to me it should be applied everywhere; that the people should, as far as possible, deliberate for the legislature, execute for the officer, and decide for the judge. If, as I believe, that be the worst and not the best theory of government on earth, the doctrine should be applied nowhere.

Mr. President, the senator from New Hampshire [Mr. CHANDLER] well said that this is the first change ever seriously proposed in the framework of our national government. All the other amendments have been restraints upon the people's will to secure the people's rights. The amendment in the time of Mr. Jefferson only required the designation by the electoral college of the offices to be held by the persons for whom their votes were cast; a change shown to be necessary by the experience in the famous contest between Jefferson and Burr.

Never before has there been proposed, so far as I know, a change which is to affect the great balance of political power which our fathers adjusted with so much care. I quite agree with the senator from Oregon that the principle of this change will lead to the choice of the President, the choice of the senators, and in the end to the choice of the judges by the mere brutal force of numbers. I do not agree with him in thinking such a change is desired by the American people. When it shall be accomplished, the American constitution is gone.

Mr. President, I have no respect for the habit which has long since grown up of undervaluing the character of American legislative assemblies. Since our government went into action it has been the habit of thoughtless persons or of persons who in their own lives have had no experience in public responsibilities—the habit has even crept into grave histories—to decry and disparage the Continental Congress. The men who made up that illustrious body began their services with the great state papers which commanded the admiration of Chatham, who declared that although he had read Thucydides and was familiar with the master minds of the past, in his judgment they equaled anything in antiquity.

These papers—the address to the King, the address to the British people, and the address to the people of Ireland—were followed by the Declaration of Independence. It was the same Continental Congress whose wisdom selected Washington for the command of our armies and Franklin and John Adams for our diplomatic agents abroad. It was the same Continental Congress which stood faithfully by Washington during the seven years of the Revolutionary war, which ended its labors with the great Ordinance in 1787, and whose members composed in large part the body which framed the constitution itself.

Of the thirty-nine men who signed the constitution, eighteen signed the Declaration. Ellsworth, who signed the Declaration, was absent when the constitution was completed. Gerry, who signed the Declaration, refused to sign the constitution. The failure, if there were any failures in the conduct of the Revolutionary war, was the failure of the American states, who were

too jealous to part with their own power or to establish and trust the necessary agencies for their own protection and safety.

The legislature of my own state has had two hundred and sixty years of illustrious history. During my life, while the legislature has been in session, it has been the target for the sneers of critics and of the press. But every session has ended its own term of laborious service, completing a record in which always is to be found some new and valuable legislation for humanity, for labor, for education, for administration of justice, which is alike beneficial to their own constituencies and an example to the people of other commonwealths.

I am neither afraid nor ashamed to compare the statute book in which is found the essence of the history of Massachusetts for nearly three centuries with any other body of laws which may be produced by any other commonwealth or by any nation. I believe the men who have done this work have performed also to the satisfaction of the people the important work of selecting their representatives in the national Senate.

Why, it is said the Senate has not responded to the popular will. When has it failed to respond to the popular will when the popular will itself had become settled? The gentlemen who make this complaint are impatient. They must remember that the Senate has to act for the interests of a people of 65,000,000 and for a nation whose life is to be measured, not by years or by generations, but by centuries. Sessions of Congress, terms of presidential office, generations of men, count but as minutes, are but as the pulsation of an artery in this mighty national life. But whenever the American people has made up its mind, when its judgment is formed, when its will is determined, that will is sure to be carried into effect. Whether through Senates or over Senates, through courts or over courts, through presidents or over presidents, through constitutions or over constitutions the irresistible current will make its way.

Mr. President, I have no patience with the spasms of dismay which seem now and then to affect some worthy philosophers. and the effects of which are occasionally seen in the Senate chamber. One day there is a fear that a few speculators in cotton or corn will diminish the price to the seller and raise

it to the buyer; and so we are asked to overthrow and sweep away all of the rights of the states by a single legislative act, and a majority of this body and the other House lose their heads and are taken off their feet. They think all our existing constitutional resources are powerless before a few speculators. So, because a few millionaires clink their money bags about our state legislative halls, it is proposed to overthrow the constitution of our fathers and build up a pure democracy in its place.

The American people have dealt with dangers that were serious before. They have put down rebellion, they have abolished slavery, they have thrown off the yoke of foreign tyranny by strictly constitutional processes, and with the weapons in their hands that have served them so well in the past they have no occasion for apprehension of these new dangers.

*Contempsit Catilinae gladios, non pertinescunt tuos.*

The people of the United States are proud of their history. It is a touching and noble story. The American youth knows something of the annals of other lands. His childhood has delighted in the half-fabulous legends by which they explain their origin. He is especially acquainted with the history of the older republics and of countries where constitutional liberty has in other years found its home. He can tell you something about Solon and Lycurgus, about Romulus and the she wolf, of Numa in his cavern, of Tell and Winkelried, of Alfred and Edward, of Agincourt and Cressy, and the barons who wrung Magna Charta from King John.

But he better loves the story, with which no romance or fable mingles, upon which history pours its full and blazing torchlight, of the men who founded these states of ours in Christian liberty and law. He likes better to hear of the Pilgrim of Plymouth, of the austere Puritan of Salem and New Haven, of the liberty-loving enthusiast of Rhode Island, of the Quaker of Pennsylvania, of the Catholic of Baltimore, of the adventurous Cavalier of Jamestown. He knows the quality of the woodsmen who, in the later generations, struck their axes into the forests of this continent; of the sailors who followed their prey from the Arctic to the Antarctic Sea. He

knows how his country has spread from a little space by the side of the Eastern sea, till in her westward march the gates of the East become visible again, and she has added to her dominion until, as my late colleague said, "before the sun sets upon Alaska he has risen upon Maine." He knows by heart the military achievements of the Revolution and the great sea fights of the war of 1812. He knows what this country has done in science and literature. He knows what her inventive genius has added to the world's wealth and how it has lifted the burden beneath which the back of humanity has so long been bowed and bent.

But he knows, also, something of that which makes these great achievements permanent and secure. He knows something of the great foundations upon which the structure of our constitution is reared. He knows something of the temperate restraints of American liberty. The figures of great judges and of great senators command his admiration and stir his enthusiasm and excite his sober approbation quite as much as any achievement by sea or any military glory upon land. The profound sagacity of Ellsworth, whose great fame in the beginning of the government reached the people even from within the closed doors of the Senate chamber; the unequalled wisdom of Marshall, without whose luminous exposition the mechanism of the constitution must have failed; the robust sense of Taney; the ripe learning and lofty patriotism of Bradley—these will be as familiar to his instructed intelligence as the name of any great captain or admiral. He comes of a race of political shipwrights, and he knows by heart below and aloft the whole structure of our ship of state. He knows to the fullest depths of its meaning what the flag stands for. He knows how to bend the sails and step the masts. He likes only too well the sound of the guns. But he has found out that it is not the colors, or the armament, or even the sail that makes the ship stanch and the voyage prosperous and secure. It is the tough resistance of the mast, the strength of the timbers, the fashion of the keel, the strength below the water line, the chain and the anchor to which the ship of state, with her precious freight, owes her safety.

He knows what master laid her keel;  
What workmen wrought her ribs of steel;  
Who made each mast, and sail, and rope;  
What anvils rang, what hammers beat,  
In what a forge and what a heat  
Were shaped the anchors of her hope!  
He fears no sudden sound or shock,  
'Tis of the wave, not of the rock;  
'Tis but the flapping of the sail,  
And not a rent made by the gale!

I said in the beginning that this is a question of centuries and not of years. It is to the credit of the men who framed the constitution that they so understood it. If they had taken counsel of their own recent experience, they never would have ventured to appeal to the people of their own generation to establish the permanent securities of the constitution, and would never have ventured to trust them with the powers which the constitution creates.

The six years which followed the peace of 1783 present but a sorry story. It is a tale of feeble government, of disaster, of discontent, of broken faith, of depreciated currency, of stay laws, of suffering debtors, of cheated creditors, of lawlessness, of Shays's rebellion, and of popular commotions North and South. Some of our best friends abroad thought it was all over with us, and that the best thing we could do was to ask George III to take us back into favor. But out of it came the Ordinance of 1787, the constitution of the United States, the design of the Supreme Court, the conception of the Senate, the great debate upon the adoption of the constitution, and the adoption of the constitution by the unanimous action of thirteen states.

We have had one great civil war. But yet it is our glory, as it is the glory of the country from which our ancestors came, that we determine the differences which cause revolutions elsewhere by debate and not by arms. We reason them out, and do not fight them out. This chamber has been the most conspicuous arena of these conflicts. Here the champions have encountered and measured their strength. There have been chieftains in the Senate chamber whose names and memory the American people cherish with pride and gratitude, as they cherish the names and memory of the men who marshaled the forces at Saratoga or Yorktown, or New Orleans, or Appomattox.

The great conquests which gave the union and constitution their empire over the reason and affection of our countrymen have been achieved here. Here Webster hurled the weighty projectiles of his irresistible argument. Here the voice of Clay taught his countrymen North and South the great lesson of reconciliation. Here Calhoun was borne in his dying hours, his great heart overcoming the weakness and infirmities of his sinking body, sitting, as his colleagues said, like "a wounded eagle, with his eyes turned to the heavens to which he had soared, but into which his wings could never carry him again." Here the blood of Sumner was shed—the baptismal water of our newer liberty. Here Seward summoned his countrymen to that irrepressible conflict from whose issue the vanquished gained even more than the victors. Victories in arms are common to all ages and to all nations. We do not excel, and it may be we do not equal, other people in these things. But the greatest victories of constitutional liberty since the world began are those whose battle ground has been the American Senate and whose champions have been the senators who for a hundred years, while they have resisted the popular passions of the hour, have led, represented, guided, obeyed, and made effective the deliberate will of a free people.

**Congressional Record. 26: 7763-6. July 20, 1894.**

Stephen A. Northway.

It is expected that we shall get abler men in the Senate under the proposed system of election than now. I should like to know how any improvement can be expected in that respect, because at present three-fourths of the senators are graduated from this body [the House] and were the election made by the people, the other portion of the senators might be supplied by members of this House if they should have their ambitions fulfilled. I should like to know why the Senate would be stronger in ability if senators were chosen directly by the people than it is to-day.

Unless my memory misleads me, I have seen as many newspaper charges in regard to members of Congress having bought their way into this body as I have seen of such charges affect-

ing senators—I mean as many in proportion to the greater number of members in the House.

Do you suppose that if they are Republicans they would be able to hold their seats by fraud with Democrats ready to attack them? Do you suppose that senators guilty of this charge would, if Democrats, be permitted to hold their seats there with the Republicans ready to attack them? Such charges may be made for political purposes, but they are difficult to be proved.

**Congressional Record. 26: 7775-6. July 20, 1894.**

William J. Bryan.

We all recognize that there is a reason for the election of senators by a direct vote to-day that did not exist at the time the constitution was adopted. We know that to-day great corporations exist in our states, and that these great corporations, different from what they used to be one hundred years ago, are able to compass the election of their tools and their agents through the instrumentality of legislatures, as they could not if senators were elected directly by the people.

We are told that we must not change the constitution because it is a sacred instrument. He who would make such alterations as changed conditions necessitate is a better friend to the constitution and to good government than he who defends faults and is blind to defects.

Our state constitutions are frequently changed, and necessarily so, since circumstances change from year to year. Pennsylvania has had four constitutions, Missouri four, Texas three, Virginia five, etc. Each generation is capable of self-government, and must suit to its peculiar needs the machinery of government and the laws.

**Congressional Record. 28: 1382-5. February 6, 1896.**

David Turpie.

An examination of our internal political history will show that ever since the organization of parties, at the close of the second administration of Washington, there has always been a third party. It has a right to be there, but it is owing to our present imperfect mode of choosing senators that its presence



becomes so potential, and that its power becomes vital, crucial, out of all proportion to the small number of voters who at the polls are known as its adherents.

Whether the state of political equilibrium in our legislatures, now so frequent, arises from the presence and action of a third party or from the personal divisions and private discussions in one or the other of the principal parties there represented, the result is the same—the failure to choose, or the compulsory choice of some one not preferred by and not representative of the wishes and opinions of the greater number. The election of United States senators by a plurality vote of the people would instantly remove this growing evil, and would immediately restore and perpetuate the legitimate rule of the majority voting.

**Congressional Record. 30: 169-73. March 23, 1897.**

David Turpie.

The pending amendment is in strict accordance with the great precedent of growth and advancement set forth in the preamble of the constitution. Our purpose is to form a more perfect union by bringing the national legislature in complete accordance with the legislative assemblies of the states; to establish justice by granting to the voters of the states that equality of suffrage which the present system denies; to perpetuate the blessings of liberty to ourselves and our posterity by a further and nobler recognition of duties and rights inherent in all citizens, so that the supremacy of the people, never gainsaid, so often with the lips confessed, with the tongue asserted and maintained, shall at last be and become a vital force, a living presence, a fact accomplished, in the government of the republic.

**Congressional Record. 35: 3925-6. April 10, 1902.**

Chauncey M. Depew.

Now the Senate cannot go behind the legislatures of the states and investigate the election of their members, but with the election by the people it can go into the regularity and returns of every election precinct and contests of senatorial seats will be the leading work of every session.

**Congressional Record, 35: 3979-81. April 11, 1902.**

Chauncey M. Depew.

When the people of the United States are to elect senators by the people of the state doing it, then the men who cast their manhood vote in the state of New York want to know whether people equally entitled with themselves have cast a manhood vote under similar circumstances in the state of Mississippi.

Notwithstanding the exceedingly ingenious and the exceedingly able explanation given by the senator from Mississippi, everybody knows that there is no fairness in the tests which are provided by the constitution of that state for the registration of voters. The canvassing board are all of one party. The canvassing board are selected for one purpose—to prevent the negro from voting, no matter what his intelligence may be; to prevent the negro from being registered, no matter what his intelligence may be.

And what is the device? Twenty or fifty or one hundred white men who can not read, who can not write, and who do not know whether the constitution is the constitution of the United States or of the state of Mississippi or of their own bodies, are not asked the question, because their grandfathers voted. That qualifies them to vote. But a negro comes up who is a graduate of Yale College and who does understand the constitution of the United States and the constitution of the state of Mississippi. He has passed through Columbia College or Harvard Law School.

This registration board ask him if he can read. "Yes." "Can you write?" "Yes." "Do you understand the constitution of the United States?" "I do; I have learned it by heart." "Do you understand the constitution of the state of Mississippi?" "I do; I know it by heart." "Well, you must construe it intelligently. Construe that section"; and that construction never can satisfy that registration board, and he is disfranchised. That is the kind of a vote which would send United States senators to this body. That is the kind of an agitation which would be precipitated into this chamber. That is the kind of a controversy which would take up the whole time of the Senate in deciding who were entitled to vote.

My eloquent friend from Mississippi says what difference would it make, because substantially the same people would come here from the Southern states by the people as now come here by the action of our legislature and our primaries. I will tell you what difference it would make. If there was manhood suffrage there would be here Republican senators from Virginia; there would be Republican senators from Kentucky if they had a proper election law in Kentucky. If there was manhood suffrage the distinguished senator from North Carolina [Mr. Pritchard], who has been sent here twice, would be sent here again.

**Congressional Record. 35:6595, 6596. June 11, 1902.**

George G. Vest.

We are told that the object of the joint resolution is to remove the facility with which corruption may be used in the election of senators. Mr. President, my observation and experience teach me that where corruption can be used corrupt men will always find a way to use it. What will be the result if the joint resolution is adopted as it comes from the House? Every intelligent man in this country knows that the candidates for United States senators in the respective states will be nominated by conventions, and every intelligent man knows how easily conventions will be influenced by improper means to make nominations which the party represented in the convention will deem it their duty to support.

We are told to-day multimillionaires can buy legislatures. Who pretends to say that they can not, especially in the large cities, buy the votes, by hundreds and thousands, of the men who will by direct vote elect United States senators? Who pretends to say that this body of United States senators, ninety in number, is not equal in integrity, in intelligence, in all the great qualities of a representative capacity to the governors of the respective states? Who does not know that the governors consider it a promotion to come from their executive office to this body? Are the governors more honest, more intelligent, more fit to represent the people than the Senate as assembled here? Who says it?

Mr. President, those governors are elected by direct vote of the people. And yet we are told that if we change the form of election we get rid of the impurity at the very source of all legislative power. Who believes that if you change the form of election you get rid of the great motive power, the people, who, if corrupt themselves, will surely make that fact manifest in the result of any election?

Now, Mr. President, I will simply say that all this issue is a plan adopted by adroit politicians, in my opinion, who desire to make the impression upon the people that they are better and purer and more competent to choose senators than the men whom they may elect through a general assembly or legislature of the state.

I should like some senator to tell me how the people of a county or an election district can know better the qualifications for the high office of a United States senator of a multimillionaire whom they have never seen, and whose name is put before them by a convention they never attended, than they can pass upon the qualifications of a member of the legislature.

How can they better know as to the qualifications of such a candidate than one of their own neighbors, with whom they have lived for years, with whose antecedents they are familiar, and whom they know to be honest, intelligent, and acquainted with their interests? But we are told that the question of the election of the multimillionaire with his millions of dollars, utterly unknown to the people, is to be passed upon by them in preference to this neighbor, whom they have known for half a century.

I repeat, Mr. President, if the fountain is impure the stream will be impure. You can not evade this issue by the form of the election.

### Constitutional Convention

Debates on the Election of Senators in the Federal Convention of 1787.

TUESDAY, MAY 29TH.

*In convention,—\* \* \**

Mr. RANDOLPH then opened the main business:—\* \* \*

He proposed, as comformable to his ideas, the following resolutions, which he explained one by one:

\* \* \* \* \*

5. Resolved, that the members of the second branch of the national legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, to be the age of — years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of — after the expiration thereof." \* \* \*

Mr. CHARLES PINCKNEY laid before the House the draft of a federal government which he had prepared, to be agreed upon between the free and independent states of America:

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#### Article IV

"The Senate shall be elected and chosen by the House of Delegates; which House, immediately after their meeting, shall choose by ballot — senators from among the citizens and residents of New Hampshire; — from among those of Massachusetts; — from among those of Rhode Island; — from among those of Connecticut; — from among those of New York; — from among those of New Jersey; — from among those of Pennsylvania; — from among those of Delaware; — from among those of Maryland; — from among those of Virginia; — from among those of North Carolina; — from among those of South Carolina; and — from among those of Georgia. The senators chosen from New Hampshire, Massachusetts, Rhode Island, and Connecticut, shall form one class; those from New York, New Jersey, Pennsylvania, and Delaware, one class; and those from Maryland, Virginia, North Carolina, South Carolina, and Georgia, one class. The House of Delegates shall number these classes one, two, and three; and fix the times of their service by lot. The first class shall serve for — years; the second for — years; and the third for — years. As their times of service expire, the House of Delegates shall fill them up by elections for — years; and they shall fill all vacancies that arise from death or resignation, for the time of service remaining of the members so dying or resigning. Each senator shall be — years of age at least; and shall have been a citizen of the United States for four years before his election; and shall be a resident of the state he is chosen from. The Senate shall choose its own officers." \* \* \*

#### Article X

"Immediately after the first census of the people of the United States, the House of Delegates shall apportion the Senate by electing for each state, out of the citizens resident therein, one senator for every — members each state shall have in the House of Delegates. Each state shall be entitled to have at least one member in the Senate." \* \* \*

THURSDAY, MAY 31ST.

WILLIAM PIERCE, from Georgia, took his seat.

*In the Committee of the Whole* on Mr. RANDOLPH's propositions,—The third resolution, "*that the national legislature ought to consist of two branches,*" was agreed to without rebate, or dissent, except that of Pennsylvania, given probably from complaisance to Dr. FRANKLIN, who was understood to be partial to a single house of legislation.

The fourth resolution, first clause, "*that the members of the first branch of the national legislature ought to be elected by the people of the several states,*" being taken up:

Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the state legislatures. The people, he said, immediately, should have as little to do as may be about the government. They want information, and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience, that they are daily misled into the most baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the governor, though secured by the spirit of the constitution itself. He had, he said, been too republican heretofore: he was still, however, republican; but had been taught by experience the danger of the levelling spirit.

Mr. MASON argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community; and ought therefore to be taken, not only from different parts of the whole republic, but also from different districts of the larger members of it; which

had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, &c., &c. He admitted that we had been too democratic, but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering, that, however affluent their circumstances, or elevated their situations, might be, the course of a few years not only might, but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of the states to federal measures had proceeded much more from the officers of the states than from the people at large.

Mr. MADISON considered the popular election of one branch of the national legislature as essential to every plan of free government. He observed that in some of the states one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the state legislatures, the second branch elected by the first, the executive by the second together with the first, and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether; and the neces-

sary sympathy between them and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature and in the executive and judiciary branches of the government. He thought, too, that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the state legislatures, drawn immediately from the people, did not always possess their confidence. He had no objection, however, to an election by the people, if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number, out of which the state legislatures should be bound to choose.

Mr. BUTLER thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national legislature, by the people, Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia—aye, 6; New Jersey, South Carolina—no, 2; Connecticut, Delaware, divided.

The remaining clauses of the fourth resolution, relating to *the qualifications of members of the national legislature*, being postponed, *nem. con.*, as entering too much into detail for general propositions,—

The committee proceeded to the fifth resolution, *that the second [or senatorial] branch of the national legislature ought to be chosen by the first branch, out of the persons nominated by the state legislatures.*

Mr. SPAIGHT contended, that the second branch ought to be chosen by the state legislatures, and moved an amendment to that effect.

Mr. BUTLER apprehended that the taking of so many powers



out of the hands of the states as was proposed, tended to destroy all that balance and security of interests among the states which it was necessary to preserve; and called on Mr. RANDOLPH, the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

Mr. RANDOLPH observed that he had, at the time of offering his propositions, stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for, against this tendency of our governments; and that a good Senate seemed most likely to answer the purpose.

Mr. KING reminded the committee that the choice of the second branch as proposed (by Mr. SPAIGHT) viz., by the state legislatures, would be impracticable, unless it was to be very numerous, or *the idea of proportion* among the states was to be disregarded. According to this *idea*, there must be eighty or a hundred members to entitle Delaware to the choice of one of them.

Mr. SPAIGHT withdrew his motion.

Mr. WILSON opposed both a nomination by the state legislatures, and an election by the first branch of the national legislature, because the second branch of the latter ought to be independent of both. He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of choosing the senate of New York, to-wit, of uniting several election districts for one branch, in choosing members for the other branch, as a good model.

Mr. MADISON observed, that such a mode would destroy the

influence of the smaller states associated with larger ones in the same district; as the latter would choose from within themselves, although better men might be found in the former. The election of senators in Virginia, where large and small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality would often prefer a resident within the county or state, to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own state.

Mr. SHERMAN favored an election of one member by each of the state legislatures.

Mr. PINCKNEY moved to strike out the "nomination by the state legislatures"; on this question—Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—9; Delaware, divided.

On the whole question for electing by the first branch out of nominations by the state legislatures—Massachusetts, Virginia, South Carolina, aye—3; Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no—7.

So the clause was disagreed to, and a chasm left in this part of the plan.

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THURSDAY, JUNE 7TH.

*In Committee of the Whole.*—Mr. PINCKNEY, according to notice, moved to reconsider the clause respecting the negative on state laws, which was agreed to, and to-morrow fixed for the purpose.

The clause providing for the appointment of the second branch of the national legislature, having lain blank since the last vote on the mode of electing it, to-wit, by the first branch, Mr. DICKINSON now moved "that the members of the second branch ought to be chosen by the individual legislatures."

Mr. SHERMAN seconded the motion; observing, that the particular states would thus become interested in supporting the national government, and that a due harmony between the two governments would be maintained. He admitted that the two

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\* This question is omitted in the printed Journal, and the votes applied to the succeeding one, instead of the votes as here stated.

ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

Mr. PINCKNEY. If the small states should be allowed one senator only the number will be too great; there will be eighty, at least.

Mr. DICKINSON had two reasons for his motion—first, because the sense of the states would be better collected through their governments, than immediately from the people at large; secondly, because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the state legislatures, than in any other mode. The greatness of the number was no objection with him. He hoped there would be eighty, and twice eighty, of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

Mr. WILLIAMSON preferred a small number of senators, but wished that each state should have at least one. He suggested twenty-five as a convenient number. The different modes of representation in the different branches will serve as a mutual check.

Mr. BUTLER was anxious to know the ratio of representation before he gave any opinion.

Mr. WILSON. If we are to establish a national government, that government ought to flow from the people at large. If one branch of it should be chosen by the legislatures and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people, as well as the other branch; the people might be divided into proper districts for the purpose; and he moved to postpone the motion of Mr. DICKINSON, in order to take up one of that import.

Mr. MORRIS seconded him.

Mr. READ proposed "that the senate should be appointed by the executive magistrate, out of a proper number of persons to be nominated by the individual legislatures." He said he

thought it his duty to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of government would answer the purpose, and he thought it best to come directly to the point at once. His proposition was not seconded nor supported.

Mr. MADISON. If the motion (of Mr. DICKINSON) should be agreed to, we must either depart from the doctrine of proportional representation, or admit into the Senate a very large number of numbers. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, that the additional number would give additional weight to the body. On the contrary, it appeared to him that their weight would be in an inverse ratio to their numbers. The example of the Roman Tribunes was applicable. They lost their influence and power, in proportion as their number was augmented. The reason seemed to be obvious: they were appointed to take care of the popular interests and pretensions at Rome; because the people by reason of their numbers could not act in concert, and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people, therefore, were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number, the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

Mr. GERRY. Four modes of appointing the Senate have been mentioned. First, by the first branch of the national legislature,—this would create a dependence contrary to the end proposed. Secondly, by the national executive,—this is a stride towards monarchy that few will think of. Thirdly, by the people;

the people have two great interests, the landed interest, and the commercial, including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing that the other interests are adverse to it. Fourthly, by the individual legislatures,—the elections being carried through this refinement, will be most like to provide some check in favor of the commercial interest against the landed; without which, oppression will take place; and no free government can last long where that is the case. He was therefore in favor of this last.

Mr. DICKINSON.\* The preservation of the states in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the states altogether, would degrade the councils of our country, would be impracticable, would be ruinous. He compared the proposed national system to the solar system, in which the states were the planets, and ought to be left to move freely in their proper orbits. The gentleman from Pennsylvania (Mr. WILSON) wished, he said, to extinguish these planets. If the state governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national government would move in the same direction as the state governments now do, and would run into all the same mischiefs. The reform would only unite the thirteen small streams into one great current, pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number; and that their influence, from family weight and other causes, would be increased thereby. He did not admit that the Tribunes lost their weight in proportion as their number was augmented, and gave an historical sketch of this institution. If the rea-

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\*It will throw light on this discussion to remark that an election by the state legislatures involved a surrender of the principle insisted on by the large states and dreaded by the small ones, namely, that of a proportional representation in the Senate. Such a rule would make the body too numerous, as the smallest state must elect one member at least.

soning (of Mr. MADISON) was good, it would prove that the number of the Senate ought to be reduced below ten, the highest number of the Tribunitial corps.

Mr. WILSON. The subject, it must be owned, is surrounded with doubts and difficulties. But we must surmount them. The British government cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the states being devoured by the national government. On the contrary, he wished to keep them from devouring the national government. He was not, however, for extinguishing these planets, as was supposed by Mr. DICKINSON; neither did he, on the other hand, believe that they would warm or enlighten the sun. Within their proper orbits they must still be suffered to act for subordinate purposes, for which their existence is made essential by the great extent of our country. He could not comprehend in what manner the landed interest would be rendered less predominant in the Senate by an election through the medium of the legislatures, than by the people themselves. If the legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views? He was for an election by the people, in large districts, which would be most likely to obtain men of intelligence and uprightness; subdividing the districts only for the accommodation of voters.

Mr. MADISON could as little comprehend in what manner family weight, as desired by Mr. DICKINSON, would be more certainly conveyed into the Senate through elections by the state legislatures, than in some other modes. The true question was, in what mode the best choice would be made? If an election by the people, or through any other channel than the state legislatures, promised as uncorrupt and impartial a preference of merit, there could surely be no necessity for an appointment by those legislatures. Nor was it apparent that a more useful check would be derived through that channel, than from the people through some other. The great evils complained of were, that the state legislatures ran into schemes of paper money,

&c., whenever solicited by the people, and sometimes without even the sanction of the people. Their influence, then, instead of checking a like propensity in the national legislature, may be expected to promote it. Nothing can be more contradictory than to say that the national legislature, without a proper check, will follow the example of the state legislatures; and, in the same breath, that the state legislatures are the only proper check.

Mr. SHERMAN opposed elections by the people in districts, as not likely to produce such fit men as elections by the state legislatures.

Mr. GERRY insisted that the commercial and money interest would be more secure in the hands of the state legislatures than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money, when the legislatures are against it. In Massachusetts the county conventions had declared a wish for a *depreciating* paper that would sink itself. Besides, in some states there are two branches in the legislature, one of which is somewhat aristocratic. There would, therefore, be so far a better chance of refinement in the choice. There seemed, he thought, to be three powerful objections against elections by districts. First, it is impracticable; the people cannot be brought to one place for the purpose; and, whether brought to the same place or not, numberless frauds would be unavoidable. Secondly, small states, forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord would be opened between different parts of the same district.

Mr. PINCKNEY thought the second branch ought to be permanent and independent; and that the members of it would be rendered more so by receiving their appointments from the state legislatures. This mode would avoid the rivalships and discontents incident to the election by districts. He was for dividing the states in three classes, according to their respective sizes, and for allowing to the first class three members; to the second, two, and to the third, one.

On the question for postponing Mr. DICKINSON's motion, referring the appointment of the Senate to the state legislatures, in order to consider Mr. WILSON's for referring it to the people, Pennsylvania, aye—1; Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—10.

Colonel MASON. Whatever power may be necessary for the national government, a certain portion must necessarily be left with the states. It is impossible for one power to pervade the extreme parts of the United States, so as to carry equal justice to them. The state legislatures also ought to have some means of defending themselves against encroachments of the national government. In every other department we have studiously endeavored to provide for its self-defence. Shall we leave the states alone unprovided with the means for this purpose? And what better means can we provide, than the giving them some share in, or rather to make them a constituent part of, the national establishment? There is danger on both sides, no doubt; but we have only seen the evils arising on the side of the state governments. Those on the other side remain to be displayed. The example of Congress does not apply. Congress had no power to carry their acts into execution, as the national government will have.

On Mr. DICKINSON's motion for an appointment of the Senate by the state legislatures,—Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10.

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WEDNESDAY, JUNE 13TH.

*In Committee of the Whole,— \* \* \**

The committee rose, and MR. GORHAM made report, which was postponed till to-morrow, to give an opportunity for other plans to be proposed—the report was in the words following:

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4. Resolved, that the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to ensure their independence, namely, seven years: to receive fixed stipends by which they may be compensated for the devotion of their time to the public service to be



paid out of the national treasury, to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government for the space of one year after its expiration. \* \* \*

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MONDAY, JUNE 18TH.

*In Committee of the Whole*, on the propositions of Mr. PATTERSON and Mr. RANDOLPH,—On motion of Mr. DICKINSON, to postpone the first resolution in Mr. PATTERSON's plan, in order to take up the following, viz: "that the Articles of Confederation ought to be revised and amended, so as to render the government of the United States adequate to the exigencies, the preservation, and the prosperity of the union,"—the postponement was agreed to by ten states; Pennsylvania divided.

Mr. HAMILTON \* \* \* reads his sketch in the words following: to wit.

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III. The Senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people. In order to do this, the states to be divided into election districts. On the death, removal or resignation of any senator, his place to be filled out of the district from which he came. \* \* \*

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THURSDAY, JULY 26TH.

*In Convention*, \* \* \*

The proceedings since Monday last were unanimously referred to the Committee of Detail; and the convention then unanimously adjourned till Monday, August 6th, that the Committee of Detail might have time to prepare and report the constitution. The whole resolutions, as referred, are as follows:

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4. Resolved, That the members of the second branch of the Legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter. \* \* \*

MONDAY, AUGUST 6TH.

*In Convention*,—Mr. JOHN FRANCIS MERCER, from Maryland, took his seat.

Mr. RUTLEDGE delivered in the report of the Committee of Detail, as follows—a printed copy being at the same time furnished to each member :

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#### Article V

Sect. 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the legislature. Each member shall have one vote. \* \* \*

#### The Federalist, No. xxvii.

Alexander Hamilton.

*To the People of the State of New York :*

Various reasons have been suggested, in the course of these papers, to induce a probability that the general government will be better administered than the particular governments: the principal of which reasons are that the extension of the spheres of election will present a greater option, or latitude of choice, to the people; that through the medium of the state legislatures—which are select bodies of men, and which are to appoint the members of the national Senate—there is reason to expect that this branch will generally be composed with peculiar care and judgment; that these circumstances promise greater knowledge and more extensive information in the national councils, and that they will be less apt to be tainted by the spirit of faction and more out of the reach of those occasional ill-humors, or temporary prejudices and propensities, which, in smaller societies, frequently contaminate the public councils, begets injustice and oppression of a part of the community, and engender schemes which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust. Several additional reasons of considerable force, to fortify that probability, will occur when we come to survey, with a more critical eye, the interior structure of the edifice which we are invited to erect. \* \* \*

**The Federalist. No. lxii.**

[Hamilton or Madison.]

*To the People of the State of New York:*

Having examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate.

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II. It is equally unnecessary to dilate on the appointment of senators by the state legislature. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment and of giving to the state governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

III. The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small states, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a *proportional* share in the government, and that among independent and sovereign states, bound together by a simple league, the parties, however unequal in size, ought to have an *equal* share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the constitution which is allowed on all hands to be the result, not of theory, but "of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable." A common government, with powers equal to its objects, is called for by the voice, and still more loudly by

the political situation, of America. A government founded on principles more consonant to the wishes of the larger states, is not likely to be obtained from the smaller states. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small states; since they are not solicitous to guard, by every possible expedient, against an improper consolidation of the states into one simple republic.

Another advantage accruing from this ingredient in the constitution of the senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the states. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defence which it involves in favor of the smaller states, would be more rational, if any interests common to them, and distinct from those of other states, would otherwise be exposed to peculiar danger. But as the larger states will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser states, and as the facility and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the constitution may be more convenient in practice than it appears to many in contemplation.

**Forum. 16: 272-81. November, 1893.****Senate in the Light of History.**

Since the cause of the Senate's decline is clearly the decline of the political spirit of the people, the Senate will regain its dignity and its usefulness in proportion to the rise in the political spirit of the people. There is no mechanical device whereby the lost dignity can be restored. The election of senators directly or in effect by popular vote, methods that have been much discussed, would hardly improve the Senate; for are the governors of the states abler or more dignified men than the senators? The organization of the Senate and even the method of the election of senators vindicate the wisdom of the fathers: its present personnel simply marks the decline of politics as one of the noble professions.

**Forum. 18: 270-8. November, 1894.****Should Senators Be Elected by the People? George F. Edmunds.**

In order that those who do the writer the honor of reading this contribution to the study of a very important question may thoroughly understand in what way and to what end the Senate of the United States came to be composed as it is, I beg the reader's indulgence to begin with some generalities of theory and historic events, which, however well known, can hardly, especially in these days, be too often repeated.

The establishment of all good government has been designed to secure liberty and justice. To do this, restraints and counterpoises have been proved, both by philosophy and by all human experience, to be absolutely indispensable. If too much power is vested in the executive, there is a constant tendency toward usurpation and tyranny. If too much power is left with the people, or their immediate delegates, unchecked, there is continual gravitation toward frequent and ill-considered changes in the laws, as temporary maladies that no law can cure, or crude speculative theories, may disturb the content or excite the day-dreams of the people,—such as fiat money,

loaning government money on real-estate security, and the great multitude of nostrums that socialism and anarchism propose as specifics for evils that are inherent among men as social animals, and that no act of legislation can possibly cure. Self-knowledge and self-control are, and always have been, as necessary to the welfare of communities and states as to individuals. All this is as obvious and trite as it is fundamental; but as one of the old state constitutions of more than one hundred years ago puts it, "a frequent recurrence to fundamental principles" must be the duty and safeguard of every society that wishes to be free and happy.

It has been upon such considerations that written constitutions have been framed and adopted in establishing governments of the people, declaring inalienable rights, separating governmental powers and duties into three divisions,—legislative, executive, and judiciary,—and dividing the legislative power between two separate bodies *differently constituted and composed by different processes of popular action*, and setting bounds and barriers against the preponderance of any one of such divisions, and imposing restraints upon any sudden change in the constitutions themselves. It was upon such principles and under such conditions that the great, and then unique, constitution of the United States came into existence in 1787.

The convention that framed it was constituted by the separate and independent action of all the thirteen original states (excepting Rhode Island, which sent no delegates), upon the solemn appeal of the Continental Congress, made after seven years of bitter experience in war and three in peace, during both of which periods the need of the fundamental elements and adjustments of a government adequate to the preservation of the liberties of the people, the administration of personal justice, and the stability of the whole republic, were made fully and often painfully manifest. The men who composed the convention were possessed of all that knowledge which the histories and careers of all other civilized countries and peoples could furnish; they represented all the principal occupations of civilized society and all the phases of political philosophy—monarchical in one direction, and so-called pure democracy in the

other. It was presided over by "His Excellency, George Washington, Esquire," as he is styled in the convention Journal. The convention labored assiduously from the 25th of May until the 15th of September, 1787, when the completed constitution was agreed upon and signed by representatives of all the states, excepting Rhode Island, which, as has been said, took no part in the convention. Almost every example and method of government was examined and discussed. The *apparent* conflicts of interest, and the *real* jealousies existing between large states and small ones, were to be accommodated or overcome,—undue centralization, on the one hand, as well as the fatal weakness of a mere league of states on the other, were to be guarded against. To accomplish all these supreme ends, it was easy for those learned, experienced, and patriotic men to agree that the new government should be composed of three independent departments,—legislative, executive, and judicial; and that the legislative branch should be composed of two independent parts, each having a negative on the other. But the composition of the two houses was a subject of extreme difficulty.

The states, without regard to geographical dimensions, population or wealth, freedom or slavery, were, under the Confederacy, absolute equals, and the national powers scarcely extended to, or operated personally upon, any of the citizens of the states. At last, after considering and reconsidering nearly every variety of propositions, it was agreed that the House of Representatives should be chosen directly by the people and in proportion to the number of inhabitants in each state, excepting two-fifths of the slaves. And after similar tribulations of proposal and discussion, it was settled that the president should be chosen on the principle of having regard, chiefly, to the population of the various states. So far, then, it was a government based upon capitation, and, in one part of it, required to be constituted by the direct vote of the people,—the weight and force of *numbers alone*. It was obvious that if the other branch of the legislature were constituted in the same way, either as to the number from each state or the direct method of election, there would be a perpetual tendency toward the effacement of state rights and state sovereignty in respect of

local affairs, and the establishment of a national democracy by government, practically, *en masse*, where the weight of the mass in one part of the country might, and probably would dominate over other parts, and might in the end destroy the peaceful liberties of all, as has been the ever-repeating experience of ill-balanced and unchecked forms of government,—democracy succeeding conservatism and liberal order; the commune succeeding democracy; anarchism overturning the commune; and a single despot or brace of despots springing from the cabals and corruptions of communism and anarchy to be the masters of all.

To establish a secure barrier against such tendencies and dangers, the constitution of a second legislative branch composed of persons having a different constituency, and representing the independent equality of the states, was a supreme necessity.

The proposal to elect senators by the people was brought forward and considered deliberately, and as deliberately and almost, if not quite, unanimously dismissed. The debates show how calmly and fully the whole subject was considered, and how nearly unanimous the great statesmen and patriots who composed the convention were in deciding against the proposition, which "these new charmers who keep serpents" have now revived.

The essential and underlying idea of the structure of our national government is that in its relations to the people in respect of the subjects committed to it by the constitution, and no others, it is a government operating upon *persons*, and that in respect of all its other relations with the people of the several states it affects them in their *collective character as states*.

The ultimate sovereign power of a free state must and should always reside in the people. But a wise people who wish to remain free and sovereign never undertake the task of exercising their sovereignty otherwise than by selecting representatives responsible to them, to do all acts of governmental sovereignty, save in passing *ad referendum* upon their constitutions. It is true that in some of the Swiss republics and in a few of the states of our union some laws have been



passed to take effect upon the approval of the people, but these are rare exceptions. The legislature of a state, then, is the depositary of the whole mass of the sovereign power which the people, as such, have set forth and defined in its constitution. It expresses the *will* of the state; the executive executes that will; and the judiciary, in cases of dispute, decides what that will is. In constituting and exercising such a sovereignty, the people of a state never elect either branch of their legislature by the popular vote of all the citizens on a general ticket: that step remains to come in when the dream of the socialist shall be realized. The reason is obvious. Such a method would be purely the voice of an aggregation of mere numbers regardless of intelligence, property, and business interests, as well as of that innate sense of the value of the geographical distribution and separation of the various parts of a state into small communities substantially homogeneous. This notion begins with the nature of man himself as a separate individual; it is the foundation of the family, the town, the county, and of the state also, in our great republic. Upon it rests the division of states into congressional districts, which took place in 1842, after fifty-three years of experience had demonstrated the evils of the system of electing members of the House of Representatives from each state by a vote *en masse*, —a system to which no one is yet wild enough to propose a return. The government of a state is instituted for the benefit of the whole people, and not for that of party nor for that of a majority of its people alone; and the act of a state in choosing its senators is one of the most important parts of its governmental duty. Both reason and experience prove that an election by a majority of all the people of a state is radically a different thing from the choice of the same officers by the people (through their representatives) of the separate political divisions of it. In respect of members of the House of Representatives and of the state legislatures, the vast majority of citizens will agree that such a system of mass voting would be unendurable, and dangerous to, and at last destructive of, good government, and even liberty itself, as rational men understand the term.

If these conclusions be true as regards the election of members of the House of Representatives and the members of the state legislatures, is it not equally clear that the founders of the republic adopted the best possible—and indeed imaginable—method of choosing the members of the national Senate? They believed that the liberty and happiness of the people of the several states—states which they foresaw would finally embrace a continent in their benign sway—could only be preserved by such divisions and subdivisions of the sources and methods and exercise of political power as they adopted and provided for. A century of experience has demonstrated the wisdom of their marvelous plan.

But a new school of politicians has now appeared who profess to believe that the fathers were mistaken in their theory of the surest foundation of our national republic, and that the system they adopted has not, in regard to senators, worked well,—that the senators have not been the choice of, and have not represented, the great body of the people of the states that elected them, and therefore that elections of senators should be had by the suffrage of all the voters in the state *acting together*. One test of the truth of the first statement is the fact that of the less than 900 persons who have served as senators since the government was organized in 1789, more than 200 have been members of the House of Representatives—substantially one-fourth.

Only two states—Montana and Nevada—have not been thus represented, while more than one-half of the senators from Massachusetts, Connecticut, Indiana and Maine have been members of the House of Representatives; and, in addition to these, a very large fraction of the senators have been governors and judges elected by the people in their states. These facts show that it has been almost universally true that those chosen as senators have possessed the confidence, not only of the legislative representatives of political divisions of the states but of the whole body of the people as well. The second part of the assertion of the persons who have seen a new light, as they think, is that sometimes “senators do not represent their states.” This is true; but, happily for all the states and their

people, *a senator, once chosen, becomes a senator of the United States*, and is not the mere agent of the state that chose him. And, as to the state itself that chose him, it has happened, and will happen again, that a gust of passion or a misguided opinion has taken temporary possession of a majority of the people of a particular state, which the senator, in his bounden duty to all the states, has disregarded. This was one of the very incidents that the patriots of 1787 foresaw and provided against by legislative elections and a long time of service.

Again, the new school of constitution-makers say that they think the Senate has become a body of rich men who gained their places by corrupting legislatures in a pecuniary way. But to any one acquainted with the personality of the Senate as it has existed for a generation and is now, such a statement is known to be absolutely destitute of foundation. The proportion of rich men in the Senate is not greater than that which exists in every state and community in the whole country where the honors and responsibilities of public office are shared alike by the rich, the comfortable, and the poor. As a perfect millennium has not yet been reached, it is doubtless true that some (but very few) men have secured election as senators by pecuniary persuasions, or, to put it roughly, have "bought their places" with money,—a crime of the worst character both in the buyer and in the seller. But, alas, this is not a peculiarity belonging to the office of senator alone. It has happened equally or more often in elections to the House of Representatives, as well as in state and municipal elections. A legislative election of senators, therefore, is not the cause of this great evil. In the nature of things, it must be worse in popular elections, for the members of a legislature must, in the choice of the senator, vote openly, so that the constituents know whether or not their representatives have followed the general judgment of the particular communities they represent,—a matter of vital importance in all representative government. But in popular elections, where each citizen is acting in his personal character only, it is equally important that he have the right to vote secretly, notwithstanding that he may be bribed in spite of every precaution that the law may adopt to prevent

it. And when we go back of the regular act of a government election and reach the "primaries" and the district, the county and state conventions, all barriers and safeguards are left behind, and the corruptions of riches and still more of trading machines and office brokerage, have their easiest and most abundant field of achievement in selecting candidates. To cite examples to the intelligent reader would be a waste of time. The real people of this republic of states and citizens—those who believe in liberty and order as inseparable, who believe in the value of individual endeavor and frugality, and, as a consequence, in the right to save earnings and to have homes and houses and lands and schools and churches—should consider:—

*First*, that the constitutional provision for the choosing of two senators from each state by its legislature was wisely designed by the states that founded the government, as one of the corner-stones of the structure necessary to secure the rights and safety of the states.

*Second*, that a legislative instead of a popular election was adopted as necessary to the expression of the deliberate will of the state in its character as such, represented in all its parts in the way in which its own constitution distributed power.

*Third*, that the people of the several political divisions of the state should have the right to express their choice separately through their legal representatives, as they do in making laws, and not be overwhelmed by a mere weight of numbers that might occupy only a corner of the state and possess interests and cherish ambitions quite unlike those of all the other sections of the commonwealth.

*Fourth*, that the Senate as it has existed for a century has demonstrated the wisdom of the mode of its constitution.

*Fifth*, that its members have been as free from any just accusation of corruption, either in their election or in their course as senators, as any equal number of men connected with public affairs on the face of the earth, or connected with all the employments of private life.

*Sixth*, that as the election of senators by the state legislatures must be by open public voting, the danger of bribery, or the misrepresentation of constituents for other causes, is reduced to

a minimum, and stands in strong contrast with the election of senators by the direct vote of the whole mass of voters in the several states, and especially in states where political parties are nearly equal in numbers.

*Seventh*, that, whatever evils now and then happen under the present system, they do not arise from any fault in the system itself, but from the fault of the body of citizens themselves,—non-attendance at caucuses and primaries; non-attendance at registration and at the polls; slavish fidelity to party organizations and party names; a contributing to and winking at the corrupt use of money at nominating conventions and elections; and the encouragement or tolerance of individual self-seeking in respect of getting possession of offices, all of which are truly public trusts.

*Eighth*, that in ninety-five instances out of a hundred, if there be an evil or inadequate senator or other officer in the public service, it is because the power that elected or appointed him—his state or community—has been either grievously negligent or else is fairly represented. We must believe that the people's government is a failure and a delusion, to think otherwise.

*Ninth*, and finally, there is neither reasonable nor plausible ground, then, for taking the grave step of disturbing the exact and solid balance of the powers and functions of our national constitution, which has in these respects given us a century of security, of state representation, and of state rights, as well as a wonderful national progress as a people.

#### Forum. 21: 385-91. June, 1896.

Election of Senators by Popular Vote. John H. Mitchell.

Take it altogether, the choice which the people have as a rule in the election of United States senators under our present system is involved in so many uncertainties, and surrounded by so many restrictions, that virtually they have no choice at all in relation to it. The present system is unrepresentative, undemocratic, and vicious in all respects.

Not the least offensive of these restrictions imposed by our present system is that which deprives the individual voter of the right to cast his vote directly, and without circumlocution through vicarious instrumentalities, for a United States senator.

The arguments in favor of the proposed change may be thus summarized:

First. United States senators, like members of the national House of Representatives, are under our system elective officers as contra-distinguished from federal judges who do not come within that category, and the proposition to elect by a direct vote of the people is, it is believed, elemental as well as fundamental when considered in the light of the underlying principle upon which individual suffrage is based. The existence of the right of suffrage implies the right, or at least should carry with it the right, to exercise it *directly* and not *vicariously*. The political and moral supremacy of the people can only in this manner be rightfully expressed and maintained.

Second. It will afford a prompt and efficient remedy for the manifest evils made possible by, and unfortunately resulting too frequently from, the present system of senatorial elections, namely, the great length of time consumed in the election and resulting frequently in a failure to choose, the consequent distraction of the legislative mind from important legislative business, and the political and personal controversies, ill feeling, and strife which are the usual—the almost inevitable—accompaniments.

Third. It will render less possible, and therefore tend to the discouragement of, the use of improper means to influence the control of senatorial elections.

Fourth. It will greatly diminish the temptation to gerrymander senatorial and representative districts by state legislatures in the interest of the political party in control.

Fifth. It will be an enlargement of the political rights of the individual voter relating to suffrage, and, therefore, a concession upon the part of the government, the effect of which, it is believed, will be salutary in tending to discourage unjust criticism of the Senate and its individual members.

Sixth. It will in a great measure eliminate from primary

and other elections, involving the selection of members of the legislature, one great cause for irritation and unseemly contention wherein as a rule the question upon which everything is made to turn is as to how this or that man will vote for senator, rather than upon the question as to his fitness for the office of legislator.

Seventh. No reform movement will so effectively as this tend to the destruction of "boss rule" and the elimination of political "bosses" from American politics in state, county, and municipal elections.

Eighth. A thoroughly-aroused and enlightened public opinion demands the change.

Hence unless some good reasons exist to the contrary, this demand should be respected by Congress, to the extent at least of giving the people of the several states through their representatives in the legislatures an opportunity to pass upon the question.

The principle objection urged in opposition to the proposed amendment is one based wholly upon the unwarranted assumption that it would in effect disturb the political relation now existing between the states respectively and the national government, and change the character of senatorial representation from that of the states in their sovereign or political capacity, as is now the case under the existing provisions of the constitution, and would thus, as it is alleged, tend to the destruction of one of the great principles of checks and balances upon which our government is organized.

The answer to this, as already indicated, is brief though conclusive. The proposed amendment neither interferes with the existing *ratio* of state representation in the Senate, nor with the character of the representation itself. It has not the slightest tendency to invade that principle of the constitution which its framers intended never should be destroyed, namely, the principle of equal state suffrage in the United States Senate. It in no respect changes the relation now existing between the states respectively and the national government; the existing sovereignty of each in its respective sphere is not in the slightest manner disturbed.

If it be true that senators now are, in virtue of the letter and spirit of the constitution, the distinctive representatives of the states in their sovereign or political capacity, then this is not changed, nor is the principle involved in such representation invaded in any respect whatever by the proposed amendment. It is the *mode* of choosing senators that will *alone* be affected, and not the capacity or character in which they shall serve, whether as the agents and representatives of the states as political entities, or of the people. The *ratio* of representation which each state must continue to have in the Senate remains wholly unaffected. Whatever sovereign functions attach to the national and state governments within their respective spheres under existing conditions will be neither enlarged nor diminished. The people of the states now choose their senators, but only indirectly through their representatives in the legislatures. This, and this only, is sought to be changed, thus enabling the people to do directly that which they can now do only in a vicarious manner.

All other objections urged may be comprehended under the general head that the people, as a whole, cannot be trusted to choose their own law-makers. Whatever may have been the distrust in this respect in the minds of some of the men who were members of the constitutional convention,—a distrust entailed by English conceptions and monarchical notions,—it is safe to say no harm is likely to come to representative republican government in America by intrusting to the qualified electors of the nation the right to choose by popular vote the men who are to make their laws, state and national.

**Independent. 52: 1292-9. May 31, 1900.**

Election of Senators by Popular Vote. William E. Chandler.

I am opposed to taking this step because I believe it will weaken rather than strengthen the structure of our government, and because it will inevitably lead to the demand for other amendments which it does not seem desirable to adopt.

Another objection is the absolute impossibility of investigating a contested election, if committed to the whole people of a state.



Independent. 66: 382-3. February 18, 1909.

Going Back to the People.

Senator Root, in his address to the New York legislature, said:

Because I believe in maintaining the two grants of power of the constitution—maintaining the national power to its full limit and still preserving the state power—I am opposed to everything that tends to belittle, to discredit or to weaken the authority of the legislatures of the states. You cannot take power away from privileged public bodies without having the character of those bodies deteriorate. For this reason I am opposed to the direct election of senators, as I am opposed to the initiative and referendum, because these things are based upon the idea, that the people cannot elect legislatures whom they trust. They proceed upon the idea of abandoning the attempt to elect trustworthy and competent state legislatures, but if you abandon that attempt—if you begin to legislate or to amend constitutions upon that theory, what becomes of all the other powers of the state legislatures in maintaining the system of local self government under the constitution?

"If the people of any state are not satisfied to trust their legislature to discharge the constitutional duty of electing senators, let them cure their own faults and elect legislatures that they can trust. Ultimately in the last analysis we must come down for successful government to the due performance of the citizen's duty at the polls, and there is no reason to believe that the citizens would perform their duty in the direct election of senators or in voting down the initiative or the referendum any better than they perform it in the election of members of the senates and assemblies of the states. I am opposed to all steps that proceed upon the theory that the people of our states are to abandon the duty of making their state legislatures able and honored bodies competent to perform the great duties of legislation for these great commonwealths.

Throughout his address Senator Root was concerned with the danger of the usurpation of state rights by the central government; and it is this thought which, he distinctly says, makes him an opponent of the school which takes final power, by election of senators or by initiative and referendum, from the legislatures. But his argument does not hold. He says that because he believes in "maintaining the national power to its full limit, and still preserving the state power," he is "opposed to everything that tends to belittle, to discredit or to weaken the authority of the legislatures of the states," such as initiative and referendum. But it is not the legislation of the states that is thus belittled or weakened, only the legislatures which are reduced in power, and that power maintained in full strength in the states and exercised by the people. Not an iota of their

power is transferred to the national Congress. Take an example. The legislature of a state feels unwilling to take the responsibility for the enactment of a liquor law or a taxing law, and refers it to the popular vote. Senator Root can find in that no invasion by the national power. The state still rules supreme. The authority has simply gone back to the source which had given it to the legislatures. The people have taken their own. The question is simply the old one of difference between aristocracy and democracy. Can you trust the people? Or, to put it in another way, can you trust the people as a whole any better than you can trust their representatives? We are inclined to think we can. We think that, if the people were appealed to as they are when we elect a president or a governor they are more likely to give a sound ethical judgment and less likely to be manipulated by designing or selfish or corrupt men. Of course they will make mistakes, but they can rectify them next time. Even legislatures make sad mistakes.

**Nation. 76: 104-5. February 5, 1903.**

#### Power of the Senate.

That body, under the present conditions, draws to itself chiefly the more presentable bosses and the mediocre sort of successful business men who fill the party chest and do the boss's bidding—"wealth unguided and uninformed, untempered by a patriotic and statesmanlike regard for the general welfare."

**North American Review. 188: 700-15. November, 1908.**

#### Election of United States Senators by the People. Emmet O'Neal.

The Senate of the United States has been termed the masterpiece of the [constitutional] convention. Its creation was not the result of previously formed plans. Emerging from the deliberations of the convention as the result of compromises made between sovereign and independent states, vested with both legislative and executive functions, its formation was less the

result of theory than, in the language of its framers, "of a spirit of amity and of mutual deference and concession, which the peculiarity of the situation of the United States rendered indispensable."

Although the Senate has made itself eminent and respected, and has maintained an intellectual supremacy over the other co-ordinate branch of the legislative department; although it has fulfilled the ardent hopes and verified the profound wisdom of its creators by its ability to check what has been termed the "democratic recklessness" of the House on the one hand, and the tendency to executive usurpation on the other; has performed all its functions with marked ability, patriotism and efficiency; and has drawn into its ranks the most distinguished men who have entered public life, yet in recent years a powerful movement has been growing to destroy the very feature which, in the judgment of all former students and critics, has been the chief cause of its excellence—the *indirect election of its members*.

Have the lurid headlines of yellow journalism as to the treason of the Senate—the irresponsible utterances of those whose sorry rôle is to pander to the morbid appetite for the sensational—so affected the public mind that the American people are ready to welcome any change, however radical?

But it is seriously claimed that the legislatures of the states are too often composed of men without experience and training, with little knowledge of national affairs, and therefore incompetent to make wise selections—too often swayed by the arts of the demagogue—obeying the behests of party bosses and machine politicians, dominated by corporate power or the selfish greed of special interests, often corrupt and therefore unfit to exercise so important a function as the selection of a United States senator.

If this indictment were true, it would be a confession that the people were incapable of self-government. The members of the legislatures of the different states are the agents and direct representatives of the people, and if it be true that as a whole they are incompetent, unworthy and corrupt, it would follow that the masses of the people from whom they spring,

UNIV. OF MICH.  
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